**Volume 28**

**Pages 5691 - 5900**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA, )
)
Plaintiff, )
)
VS. ) **NO. CR 16-00462 CRB**
)
SUSHOVAN TAREQUE HUSSAIN, )
)
Defendant. )
)

San Francisco, California
Monday, April 23, 2018

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

ALEX G. TSE
Acting United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
**BY: ROBERT S. LEACH**
**ADAM A. REEVES**
**WILLIAM FRENTZEN**
**ASSISTANT UNITED STATES ATTORNEYS**

For Defendant:

KEKER & VAN NEST
633 Battery Street
San Francisco CA 94111
**BY: JOHN W. KEKER**
**JAN NIELSEN LITTLE**
**BROOK DOOLEY**
**KATE LAZARUS**
**NIC MARAIS**
**ATTORNEYS AT LAW**

Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Pamela Batalo, CSR No. 3593, FCRR
Official Reporters

# I N D E X

Monday, April 23, 2018 - Volume 28



# E X H I B I T S

**Monday - April 23, 2018** **8:34 a.m.**

**P R O C E E D I N G S**

**---000---**

(Proceedings were heard out of presence of the jury:)

**THE COURT:** Let the record show the parties are present, but the jury is not.

So there are some other -- a couple unfinished matters to deal with before the Defense rests.

First, it is my understanding that the defendant does not wish to testify. Is that correct, Mr. Keker?

**MR. KEKER:** That's correct, Your Honor.

**THE COURT:** Mr. Hussain, do you understand you do have the right to testify? You have the right not to testify, and if you choose not to testify, I need to have your consent that you are giving up your right to testify.

Is that correct?

**THE DEFENDANT:** Yes.

**THE COURT:** Okay. And even though your counsel -- your counsel's advice, I'm sure, is very sound, you have to exercise your own judgment, and you understand that you have the right to testify, but you choose not to; is that correct.

**THE DEFENDANT:** Yes.

**THE COURT:** Okay. Thank you.

So the other matters are the Court issued an order indicating what it was doing with respect to offers of proof

and so forth and what other evidence. Do we have some type of stipulation on that issue?

Ms. Little?

**MS. LITTLE:** Yes, Your Honor. We have a stipulation which we filed on April 21st. I've given a copy to Ms. Scott and we would like to read it to the jury --

**THE COURT:** You may.

**MS. LITTLE:** -- and then enter it into evidence.

**THE COURT:** Yes. You may do so when the jury returns.

And then the Defense intends to rest; is that correct?

**MS. LITTLE:** Yes, Your Honor.

**THE COURT:** Okay. Is there anything else?

**MR. LEACH:** One matter very briefly, Your Honor.

During the testimony of Daud Khan, the Government endeavored to play an audio of one of the analyst calls. It is the audio of the February 3rd, 2010 call.

It was offered. I think the Court ruled that it could be received in evidence. For whatever reason, it didn't make its way on to the Admitted Exhibit List. We showed him a transcript of the audio call as an aid, and for whatever reason, the audio that was offered is not on the exhibit list.

I would ask to offer it now and ask that it be admitted. It's Exhibit 2687.

**THE COURT:** Is that the audio?

**MR. LEACH:** It's the audio, not the transcript. The

transcript was shown to the jury.

**THE COURT:** Right.

Any objection?

**MS. LITTLE:** No objection.

**THE COURT:** Okay.

(Trial Exhibit 2687 received in evidence)

**THE COURT:** The audios can come in. The transcripts cannot.

**MR. LEACH:** Thank you, Your Honor.

**THE COURT:** That's it. So we'll go at 9:00 when the jury comes. Sorry to get you all here so early, but I'm sure you had a very pleasant weekend, and the sun was out, just lovely. It was great. I relaxed. I'm sure you all relaxed.

Did you relax, Mr. Reeves? First of all, do you know how to relax? I know that assumes a fact not in evidence, so -- but did you relax?

**MR. REEVES:** I did not relax, but I'm feeling relaxed --

**THE COURT:** You feel relaxed now?

**MR. REEVES:** Yes, I do.

**THE COURT:** Good. Just don't exceed too much -- two and a half hours. You get two and a half hours this morning. I -- and I'm concerned about that. I'll just tell you why.

You can go a little over, but I'm concerned that the jury gets tired after a certain part and then the Defense has to

argue, and it's not quite even. Do you understand? It's not that -- that's the way it is, but don't exhaust them.

**MR. REEVES:** I hear you loud and clearly, Your Honor.

**THE COURT:** Okay. Now everybody relax and I'll be back.

**MR. REEVES:** Can I talk a little bit about the sequencing and exhaustion for the jury?

**THE COURT:** Of course.

**MR. REEVES:** I would be grateful if the Court took a brief break after the jury instructions just so that we can transition, get the podium up and get started. Maybe 10 minutes.

**THE COURT:** Sure.

**MR. REEVES:** I have planned a recess, I hope, about an hour and a half into the first --

**THE COURT:** I will let you decide when you want to do it. If you feel there is a natural -- you feel we need a, we will take a break. It's up to your argument.

**MR. REEVES:** Thank you very much, Your Honor.

**MR. KEKER:** As long as we're talking about that, Your Honor, I would like them to finish their two and a half hours before the jury goes to lunch and then come back and listen to us, but -- and the way it's set up, it seems like --

**THE COURT:** That's going to be tough, isn't it? I mean -- I think my instructions -- we will start right at 9:00.

I can't start before they get here. It may work itself out, but -- and I may delay the jurors taking lunch.

**MR. KEKER:** That is what I was wondering.

**THE COURT:** I may delay the jurors taking lunch.

**MR. KEKER:** He has talked for two hours. If he has a half hour to go, if the jury could wait for a half hour and then relax for an hour.

**THE COURT:** I will instruct and then send them out to take a little break. Your time won't commence running until you start to argue.

**MR. REEVES:** Your Honor, there is a lot to cover, and we've worked very hard to keep it compact and keep it moving, but we are relying on the Court's overall estimation of a four-hour time period for the Government's --

**THE COURT:** That was an estimate. That was an estimate.

**MR. REEVES:** We planned accordingly. I would like a little flexibility, please.

**THE COURT:** That's fine. Let me make sure I understand it all.

You want to save -- is it correct you want to save an hour and a half for tomorrow? Well, Mr. Frentzen is rising.

How much time do you want tomorrow?

**MR. FRENTZEN:** I think --

**THE COURT:** Look, it's up to you.

**MR. FRENTZEN:** I mean -- well, we'll see. I am saying I would gladly surrender, you know, like a half hour to Mr. Reeves if he needs it at the tail end.

**THE COURT:** Okay. I said in the order up to an hour and a half, so if it's less than, it's less. Then I won't -- well, but then that impinges on the -- on the Defense. I have -- I'll listen to it. I know there is a lot to cover.

**MR. REEVES:** There is a lot to cover, Your Honor.

**THE COURT:** I also know there are ways to do it that -- it's not necessary to cover everything, you see. You see, it's not -- just because it got into evidence doesn't mean that it's necessary to discuss it.

**MR. REEVES:** I understand, Your Honor. This is not my first trial, not my first summation, and I understand the balance here, but we will need a little flexibility, and we've thought carefully about this, and all I'm asking is that the Court consider that in imposing any kind of deadline on us, please.

**THE COURT:** That seems fair.

**MR. REEVES:** Thank you.

**THE COURT:** And so it will all be aided by -- on both sides -- very few objections, if any, to -- I mean, the common things are the objection that it misstates the evidence or it's not in the record and so forth.

Let's talk about that since we have a few minutes.

I almost always give the same instruction to the jury which is, you know, this is argument, this is not evidence. If their recollection differs from the way that the attorneys have recited it, it's their recollection that counts.

I mean, if something is so far off the -- off the trail but there is no way it could have come into evidence, sure, I expect an objection or you can object. You may just choose not to.

But if it's just a different take or something on it, you know, please, let's just go ahead and get this over with. Those objections don't make any difference.

Now, I know that the defense is in a difficult situation; difficult in the sense that if they don't object to something, possibly it's a waiver, but let's make sure that -- and I rely on their judgment to make sure that it's -- it's really significant that they, number one, feel that there is just no evidence to support -- it's not a reasonable inference from the evidence and therefore they're compelled to say something. Okay?

**MR. REEVES:** Thank you, Your Honor.

**MR. KEKER:** Yes, Your Honor. Got it.

**THE COURT:** I'm looking forward to this.

**MR. KEKER:** I'm not.

**THE COURT:** Well, once you get into arguing, it's sort of fun.

**MR. KEKER:** I'm looking forward to my argument, but ...

**THE COURT:** Oh.

(Recess taken at 8:53 a.m.)

(Proceedings resumed at 9:14 a.m.)

**THE CLERK:** Come to order. Court is now in session.

(Proceedings were heard in the presence of the jury:)

**THE COURT:** Let the record reflect all jurors are present, parties are present.

Does the Defense have other matters?

**MS. LITTLE:** Thank you, Your Honor. We have a stipulation that we'd like to read to the jury.

**THE COURT:** Yes. Please do.

**MS. LITTLE:** Good morning, members of the jury. I'm going to read you a stipulation regarding Autonomy books and records and Deloitte work papers.

This is Exhibit 6990.

"Defendant Sushovan Hussain and the United States hereby stipulate that Hewlett-Packard had access to Autonomy's books and records, as well as Deloitte's work papers, shortly after the acquisition closed on October 3rd, 2011.

"Dr. Michael Lynch and Sushovan Hussain continued to manage the Autonomy division of HP after the acquisition until approximately May 2012. It is so stipulated."

And, Your Honor, I would move Exhibit 6990 into evidence.

**THE COURT:** Admitted.

(Trial Exhibit 6990 received in evidence)

**MS. LITTLE:** Thank you.

**THE COURT:** Anything further from the Defense?

**MR. KEKER:** No. With that, Your Honor, the Defense rests.

(Defense rests.)

**THE COURT:** The Defense has rested. There was one other document, but we received that in evidence already. That was -- I don't know whether it has to be done in front of the jury. What exhibit number is it?

**MR. LEACH:** The United States offers 2687, Your Honor.

**THE COURT:** Okay. And that's an audio of a conversation. And that's admitted as well.

So, ladies and gentlemen -- anything further from the prosecution?

**MR. LEACH:** No, Your Honor. Thank you.

## JURY INSTRUCTIONS

**THE COURT:** So all the evidence is in. The parties have rested. And it is now my obligation to instruct you as to the law of the case.

"A copy of these instructions will be available to the jury for you to consult.

"It is your duty to weigh and to evaluate all the evidence received in the case, and in that process, to decide the facts.

It is also your duty to apply the law, as I give it to you, to the facts, as you find them, whether you agree with the law or not.

"You must not decide the case solely" -- pardon me -- "you must decide the case solely on the evidence and the law. Do not allow personal likes or dislikes, sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by any person's race, color, religion, national ancestry, gender, profession, occupation, economic circumstances or position in life or in the community. You will recall that you took an oath promising to do so at the beginning of the case.

"You must follow all these instructions and not single out some and ignore others. They are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return. That is a matter entirely up to you.

"The Indictment is not evidence. The defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent and unless -- to be innocent unless and until the Government proves the defendant guilty beyond a reasonable doubt.

"In addition, the defendant does not have to testify or present any evidence. The defendant does not have the burden to prove innocence. The Government has the burden of proving

every element of the charges beyond a reasonable doubt. A defendant in a criminal case has a constitutional right not to testify. In arriving at your verdict, the law prohibits you from considering in any manner that the defendant did not testify.

"Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the Government prove guilt beyond all possible doubt. A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence or from lack of evidence.

"If, after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if, after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

"The evidence you are to consider in deciding what the facts are consists of the sworn testimony of any witness, the exhibits which have been received in evidence, and any facts to which the parties have agreed. In reaching your verdict, you may consider only the testimony and exhibits received in evidence.

"The following things are not evidence and you may not consider them in deciding what the facts are:

"Questions, statements, objections, by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, what they will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts, as you remember, them differ from the way the lawyers state them, your memory of them controls.

"Any testimony that I have excluded, stricken or instructed you to disregard is not evidence. Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received in trial.

"Evidence may be direct or circumstantial. You are to consider both direct and circumstantial evidence. Either can be used to prove any fact.

"The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

"In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says or part of

it or none of it. In considering the testimony of any witness, you may take into account the witness' opportunity and ability to see or hear or know the things testified to, the witness' memory, the witness' manner while testifying, the witness' interest in the outcome of the case, if any, the witness' bias or prejudice, if any, whether other evidence contradicted the witness' testimony, the reasonableness of the witness' testimony in light of all the evidence, and any other factors that bear on believability.

"The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were and how much weight you think their testimony deserves.

"You are here to determine only whether the defendant is guilty or not guilty of the charges in the Indictment. The defendant is not on trial for any conduct or offense not charged in the Indictment.

"A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

"The Indictment charges that the offenses alleged in Counts 1 through 16 were committed on or about a certain date. Although it is necessary for the Government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the Indictment, it is not

necessary for the Government to prove that the offense was committed precisely on the date charged.

"You have heard testimony from Alan Rizek, Joel Scott and Steven Truitt, witnesses who received immunity. The testimony was compelled and given pursuant to court orders requested by the Government which state that the testimony will not be used in any case against these witnesses.

"You have heard testimony from Antonia Anderson, a witness who received immunity. That testimony was given in exchange for a promise by the Government that the statements or other information will not be used in any case against the witness.

"You have heard testimony from Christopher Stouffer Egan, a witness who entered into a deferred prosecution agreement for conduct arising out of the same events for which the defendant is on trial. This deferred prosecution agreement is not evidence against the defendant and you may consider it only in determining the witness' believability.

"For these reasons, in evaluating the testimony of Alan Rizek, Joel Scott, Steven Truitt, Antonia Anderson and Christopher Stouffer Egan, you should consider the extent to which or whether his or her testimony may have been influenced by any of these factors. In addition, you should examine the testimony of these witnesses with greater caution than that of other witnesses.

"During the trial, certain charts and summaries were shown

to you in order to explain the evidence in the case. These charts and summaries were not admitted in evidence and will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in this case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

"Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should therefore give them only such weight as you think the underlying material deserves."

Now I'll turn to the charges.

"The defendant is charged in Count 1 of the Indictment with conspiring to commit wire fraud in violation of Section 1349 of Title 18 of the United States Code.

In order for the defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

"First, beginning in or about Autonomy's first quarter, 2009, which began in January of 2009, and continuing until in or about October 2011, there was an agreement between two or more persons to commit wire fraud; and second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

"A conspiracy is a kind of criminal partnership, an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful. It does not matter whether the crime agreed upon was committed.

"I shall discuss with you now briefly the law relating to each of these elements.

"For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met and discussed matters of common interest, acted in similar ways or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes of wire fraud alleged in the Indictment as an object of the conspiracy, with all of you agreeing as to the particular crime which the conspirators agreed to commit.

"One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have the full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy but happens to act in a way which furthers some object or purpose of the conspiracy does not thereby become a

conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

"A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all the members of the conspiracy joined it at the same time. And one may become a member of the conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

"Even though a defendant did not directly conspire with other conspirators in the overall scheme, the defendant has in effect agreed to participate in the conspiracy if the Government proves each of the following beyond a reasonable doubt:

"That, one, the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy; two, the defendant knew or had reason to know that the other conspirators were involved with those with whom the defendant directly conspired; and three, the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture. It is not a defense that a person's participation in a conspiracy was minor or for a short period of time.

"Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime. Therefore, you may find a defendant guilty of wire fraud as charged in Counts 2 through 15 of the Indictment if the Government has proved each of the following elements beyond a reasonable doubt:

"First, a co-conspirator committed the crime of wire fraud as alleged in that count; second, the person was a member of the conspiracy charged in Count 1 of the Indictment; third, the person committed the crime of wire fraud in furtherance of the conspiracy; fourth, a defendant was a member of the same conspiracy at the time the offense charged in Counts 2 through 15 was committed; and, fifth, the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen by defendant based on what he knew at the time to be necessary" -- "to be a necessary or natural consequence of the unlawful agreement.

"The defendant is charged in Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Indictment with wire fraud in violation of Section 1343 of Title 18 of the United States Code.

"In order for the defendant to be found guilty of that

charge, the Government must prove each of the following elements beyond a reasonable doubt:

"First, the defendant knowingly participated in, devised or intended to device a scheme or plan to defraud or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations or promises. Deceitful statements or half-truths may constitute false or fraudulent representations.

"Second, the statements made or the facts omitted as part of the scheme was material; that is, they had a natural tendency to influence or were capable of influencing a person to part with money or property.

"Third, the defendant acted with the intent to defraud, that is, the intent to deceive or cheat.

"And fourth, the defendant used or caused to be used an interstate or foreign wire communication to carry out or attempt to carry out the essential part of the scheme.

"In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

"A wiring is caused when one knows that a wire will be used in the ordinary course of business or where" -- "or when one can reasonably foresee such use. It does not matter whether the material transmitted by the wire was itself false or deceptive, so long as the wire communication was used as

part of the scheme, nor does it matter whether the scheme or plan was successful or that any money or property was obtained. It need not have been reasonably foreseeable to the defendant that a wire communication would be interstate or foreign in nature; rather, it must have been reasonably foreseeable to the defendant that some wire communication would occur in furtherance of the scheme and an interstate or foreign wire communication must have actually occurred in the furtherance of the scheme.

"To convict the defendant of wire fraud based upon an omission of a material fact, you must find that the defendant had a duty to disclose the omitted fact arising out of a relationship of trust. That duty can arise either out of a formal fiduciary relationship or an informal, trusting relationship in which one party acts for the benefit of another and induces the trusting party to relax the care and vigilance which would ordinarily exercise.

"An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The Government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts or omission, along with all the other evidence, in deciding whether the defendant acted knowingly.

"An intent to defraud is an intent to deceive or cheat.

If you decide that the defendant was a member of a scheme to defraud and that the defendant had the intent to defraud, the defendant may be responsible for other co-schemers' actions during the course of and in the furtherance of the scheme, even if the defendant did not know what they said or did.

"For the defendant to be guilty of an offense committed by a co-schemer in furtherance of the scheme, the defendant must be" -- pardon me -- "the offense must be one that took place during the life of the scheme and that the defendant could reasonably foresee as a necessary and natural consequence of the scheme to defraud. You need not find that a conspiracy existed to find that the defendant is vicariously liable for actions of the co-schemers.

"You have heard evidence regarding Hewlett-Packard's process for deciding whether to purchase Autonomy. You are to consider this evidence to the extent that it helps you determine whether the defendant made false or fraudulent pretenses, representations or promises as part of a scheme or plan to defraud. You may also consider this evidence, to the extent that it helps you, to determine whether the statements or facts omitted as part of the alleged scheme were material; that is, whether they had a natural tendency to influence or were capable of influencing a person to part with money or property. If you find that this element has been met, then whether there were additional things Hewlett-Packard could have

done to avoid being impacted by the alleged misstatements and/or omissions is irrelevant to your verdict.

"The defendant is charged in Count 16 of the Indictment with securities fraud in violation of 1348 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

"First, the defendant knowingly executed or attempted to execute a scheme or plan to defraud or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.

"Second, the statements made or facts omitted as part of the scheme were material, that is, they had a natural tendency to influence or were capable of influencing a person to part with money or property.

"Third, the defendant acted with the intent to defraud, that is, the intent to deceive or cheat.

"And fourth, that the scheme was in connection with the purchase or sale of securities of Hewlett-Packard company. In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

"A defendant may be found guilty of the crimes charged in Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 even if the defendant personally did not commit the act or acts

constituting the crime but aided and abetted in the commission of the crime.

"To prove a defendant guilty of a crime by aiding and abetting, the Government must prove each of the following beyond a reasonable doubt.

"First, that the crime was committed by someone; second, the defendant aided, counseled, commanded, induced, or procured that person with respect to at least one element of the crime charged; third, a defendant acted with the intent to facilitate the crime; and, fourth, a defendant acted before the crime was completed.

"It is not enough that the defendant merely associated with the person committing the crime or unknowingly or unintentionally did things that were helpful to that person or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit the crime charged.

"A defendant acts with the intent to facilitate the crime when the defendant actively participates in a criminal venture with advance knowledge of the crime and having acquired that knowledge when the defendant still had a realistic opportunity to withdraw from the crime.

"A defendant may be found guilty of wire fraud or securities fraud even if the defendant personally did not

commit the act or acts constituting the crime but willfully caused an act to be done which, if directly performed by him or another, would be an offense against the United States.

"To prove a defendant guilty of wire fraud or securities fraud by willfully causing, the defendant must" -- pardon me -- "the Government must prove beyond a reasonable doubt that the defendant willfully caused an act to be done which, if directly performed by him or another, would be an offense against the United States. The Government need not prove that someone other than the defendant was guilty of the substantive crime.

"A person who causes a commission of an offense is punishable as a principal even though the person who completes the wrongful act violates no criminal statute because of lack of criminal intent or capacity. One who puts in motion or causes the commission of an indispensable element of an offense by an innocent agent or instrumentality is guilty as a principal.

"The Indictment presents the Government's theory of the case. The Defense theory of the case is as follows:

"Mr. Hussain contends that he and others prepared Autonomy's financial statements and disclosures in a way that provided a true and fair view of Autonomy's affairs in accordance with what Mr. Hussain understood to be the applicable accounting standards.

"Mr. Hussain further contends that he relied in good

faith, as defined herein" -- I will tell you about that -- "on Deloitte's reviews, audits and opinions regarding Autonomy's accounting judgments and that this reliance is inconsistent with the intent on his part to defraud.

"Mr. Hussain contends that he did not knowingly or intentionally falsify Autonomy's financial records or disclosures or make false or misleading statements.

"Mr. Hussain further contends that he did not participate in any scheme to defraud and did not conspire with anyone to commit fraud. To the extent that Autonomy employees may have agreed to sales deals that were in some way improper, Mr. Hussain contends he did not agree to or participate in the impropriety.

"Finally, Mr. Hussain contends that he did not intend to defraud Hewlett-Packard in connection with the disclosures made or not made during the due diligence process. Mr. Hussain contends that he and others at Autonomy provided to Hewlett-Packard the information that he understood Hewlett-Packard and Autonomy had agreed would be provided.

"In and of itself, a violation of accounting principles, opinions, standards or guidelines does not establish a violation of criminal law. However, evidence of such accounting violations may be considered by you, along with other evidence, in connection with the crimes charged in the Indictment.

"With respect to Counts 2 through 16, one element that the Government must prove beyond a reasonable doubt is that the defendant acted with the intent to defraud. Evidence that the defendant in good faith followed the advice of Autonomy's auditing firm, Deloitte, may be inconsistent with the intent to defraud.

"For there to be good-faith reliance on Deloitte's advice, the defendant, before acting, must have made full and truthful disclosures of all material facts to Deloitte and received Deloitte's advice as to the specific course of conduct that was followed.

"In addition, the defendant's reliance on Deloitte's recommended course of conduct or advice must have been reasonable given the defendant's education, experience, and knowledge."

So, ladies and gentlemen, those are the instructions. I will have some further instructions at the end of the case.

And let me just remind you, you will, each of you, get a copy of these instructions because they're not simple. They're lengthy, and -- and hopefully they will be helpful.

So we can do this. We're about to start the argument. If -- maybe you would like to take a little break before the argument. We can do that and resume here at 5 to 10:00, 5 to 10:00. Remember the admonition given to you.

(Proceedings were heard out of presence of the jury:)

**MR. KEKER:** Your Honor, I don't know when we will do it. We want to reserve all the objections we made to the instructions before. We don't have anything new.

**THE COURT:** The record should note that you have timely raised that --

**MR. KEKER:** Thank you.

**THE COURT:** -- issue.

**MR. KEKER:** Thank you.

(Recess taken at 9:48 a.m.)

(Proceedings resumed at 9:56 a.m.)

**THE CLERK:** Come to order. Court is now in session.

(Proceedings were heard in the presence of the jury:)

**THE COURT:** Let the record reflect all parties are present, the jury is present.

Mr. Reeves, you may proceed.

**CLOSING ARGUMENT**

**MR. REEVES:** Thank you, Your Honor.

May it please the Court, ladies and gentlemen of the jury, good morning. I suggest that we start where we began, back in February.

Each of you was selected as a juror in this case for largely two reasons. First, you were each willing, some perhaps a little bit more eagerly than others, to serve on a complex case like this one. Every day you have made good on that promise by arriving early and by your attention to the

evidence throughout this trial. I know some days that was hard to do.

Thank you for your service and especially thank you for the personal sacrifices it entailed and thank you for the deep commitment that each of you have shown to this case.

Second, each of you was chosen for your common sense. None of you are here today because you're an accountant. All of you are here today because you have life experiences on which you can draw to work through the issues of this particular case. Using common sense to answer the basic questions in this case will help you more than anything else to see the evidence that proves the defendant's guilt beyond a reasonable doubt.

Why would Sushovan Hussain pay Capax millions for EDD services in advance, especially when, at a minimum, it would be months before Capax could perform those services? Why pay millions before you have to? Why would Sushovan Hussain pay $11.5 million to buy more FileTek software when Autonomy had not even used the 10 million in software it had already bought from them the quarter before? Why do it again?

Why would Sushovan Hussain pay MicroTech $9.6 million for an advanced technology center that Autonomy doesn't need or $2.8 million for a federal Cloud facility that was never even built? Why pay so much for so little?

Common sense alone suggests that these kinds of deals make

no business sense, except when you follow the money.

Sushovan Hussain used millions in Autonomy money to pay Autonomy customers to buy millions in Autonomy products. The evidence in this case leaves no doubt that Autonomy was buying its own revenue. Strip away the pretext, and what you see is money flowing in a circle again and again and again.

Common sense alone tells you that sounds wrong. Please, trust your intuition. Do not let the layers of corporate detail obscure your ability to detect a bad business deal when you see it. Again and again, Sushovan Hussain engaged in noneconomic deals that made no basic business sense. Why? To prop up Autonomy and make it appear to be growing when it really wasn't.

At one level, this case is quite straightforward. Between 2009 and 2011, Sushovan Hussain engaged in roundtrips, backdated deals, channel-stuffing in order to falsely inflate Autonomy's quarterly revenues by about 10 to 25 percent each quarter. If this scheme doesn't sound sustainable, that's because it wasn't.

But Mr. Hussain could do this for so long because he was adept, adept at lying to his auditors at Deloitte about the status of these and other bad deals.

It is true that it took some skill to cook the books for so long, but, after all, Sushovan Hussain was a CFO's CFO.

The only thing that makes this case difficult is that it

played out in the context of massive corporations with millions of documents. But do not let the corporate veneer or the quantity of paper obscure the basic truth that Sushovan Hussain sold HP a company that he knew was worth far less than he said it was. And, ladies and gentlemen, that was fraud.

Every case comes down to a series of basic questions: What really happened? What did the defendant know? And the all important question, when did he know it?

I plan to walk through the evidence that answers these key questions. Some are quite easy; others require a careful sequencing of the documents.

What you will see is that three types of evidence are more important to your clearest understanding of the facts than anything else: Dollars, dates, and the documents that prove them. Follow the money. There is a constant circularity to the flow of the money in this case. If you're asking how in the world does that make sense, you are asking the right question.

Please pay close attention to the dates. Often the most important and the most fraudulent part of the document is the date. Multiple deals in this case were backdated to cram revenue into the quarter after it was over. Sometimes the defendant had others do the backdating, sometimes the defendant rolled up his sleeves and did it himself. Every time the backdating was an obvious fraud.

I have a timeline for each of the relevant deals in this case. As much as possible, I plan to walk through the key documents chronologically. When I do that, I will cite to the admitted exhibits by number. All of these exhibit citations are for your benefit. If you find them persuasive or helpful, please write the numbers down.

As the judge has instructed, the arguments of counsel are not evidence. The timelines I'm about to go through will not be available to you during your deliberation, so if you find them helpful, you may want to write down the deal name and just the exhibit numbers because I plan to move quickly.

Ready to go?

Let's start with the first quarter 2009, the $7.5 million Capax EDD I deal. This first document in the timeline is Mr. Hussain reporting to his boss, Mr. Lynch, about his estimates of the projections for the revenue for the quarter. And what you see is that by mid March, just a couple weeks before the quarter closes, that they are currently at 139 million, when the consensus and what their target is 127 to 128 million. That picture will get worse over time. These documents are recurrent and it's often where the timelines begin.

On or around March 31st at the end of the quarter, Autonomy and Capax entered into this roundtrip transaction for $7.5 million. Mr. Baiocco testified about that deal. He said

that he negotiated it with Mr. Egan. Specifically he said that Egan proposed that "they would give us the software and, well, give us the software for a price that then they would make sure on the back end that we got taken care of to pay until we're running -- we're up and running and able to do the actual work ourselves."

"So what was the price that you were -- you were -- that Capax was supposed to pay?"

Answer: "7.5 million plus support and maintenance."

He continues down below, "Well, he was proposing -- he, Mr. Egan, was proposing that it was because we weren't going to have to write a check for it."

They're not going to have to pay for it, according to Mr. Baiocco.

"They were going to actually, you know, give us the EDD sort of processing money to give us the ability to make the payments to them for the software."

Question: "So was the proposed deal that Autonomy would give you the money to pay for them, for the licensing of the software?

Answer: "Yes."

Right away, Autonomy is paying Mr. Baiocco, according to Mr. Baiocco, for Mr. Baiocco to -- and Capax to buy the license.

Now, in this early 2009 period, Mr. Baiocco explained that

Capax was not in a position to do any of the eDiscovery work. He said, "No. We couldn't have been able to do it until we had the software, and we didn't even have the software prior to that." So he's, at the beginning of working on these -- on this whole eDiscovery platform that he wants to build.

Mr. Egan gave the other side of the conversation and introduced Mr. Hussain to the negotiation. Specifically, Mr. Egan said that they did the deal for two reasons. "One, we had, as a company, outsourced EDD prior to other vendors in the past so it looked like it was a precedent and I looked at it as the concept of a retainer, as a concept where you could pay even if the service wasn't being fulfilled." That's what Mr. Egan said.

"In your discussions with Mr. Hussain, did you discuss not putting the agreement to pay Capax in writing?"

Answer by Mr. Egan: "We did."

Question: "Did you and he discuss just what -- what did you and he discuss?"

Answer: "Just that. Specifically that he didn't want it in writing and that it was something that we would do month to month at our will."

"Whose idea was it to not put it in writing?"

Answer by Mr. Egan: "That was Sushovan's."

So what happens next? In this time period, on or about April 1st, after the quarter has ended, Mr. Hussain says that,

"Stouff and I were all over the big deals." I submit to you that that's corroboration that what Mr. Egan said and what Mr. Egan described with regard to his conversation is borne out by Mr. Hussain's email.

Next in time, a little bit later in April, there is this false confirmation by Mr. Baiocco as part of this conspiracy in which he's denying the existence of any side letters to -- in the confirmation to Deloitte.

On April 16th, 16 days after the close of the quarter, Mr. Hussain wrote this email that I submit to you is important. Specifically Mr. Hussain is directing people within Autonomy to create a PO for outsourcing EDD and et cetera. Why, I ask you, would Mr. Hussain want to pay Capax in advance for services that, 16 days after they got the software, it would be impossible for them to perform? Why pay in advance?

Mr. Hussain would know that, he would know that it was impossible, because it's really immediately after he's just sold the software. This is further corroboration, I submit to you, that Mr. Hussain knew perfectly well that this was a quid pro quo roundtrip deal and an oral promise to Capax to pay them, to pay for the license.

What happens next? What happens next is a series -- this is another example of a recurrent document that is important in this case. This is an example of Mr. Hussain's management rep letter in which he insists to Deloitte as part of the audit

that Autonomy has properly prepared the books and records of Autonomy.

Antonia Anderson explains why that was not necessarily the case. Specifically Ms. Anderson testified:

Question: "If Capax had a handshake agreement for Autonomy that Autonomy was going to make sure Capax got the money to make the EDD software payments to Autonomy, would that be relevant to your assessment of whether revenue was appropriately recognized?"

Answer by Ms. Anderson: "The Deloitte auditor, yes."

Question: "Why is that?"

"Because if there was such an agreement, it would mean that the risks and rewards haven't transferred to Capax."

Question: "Were you aware at this time of your review of the Capax transaction -- Capax transaction in the audit committee report?"

Answer: "No."

She's being asked about the question of the possibility of the false invoices. Did she know about the false invoices that you heard testimony about? She said she did not know.

"Does this have relevance to whether revenue was appropriately recognized?"

Answer: "Yes."

"Why is that?"

Answer: "Because if a sale and a purchase are happening,

then we would need to understand both sides, both of those transactions, and we need to look at both transactions to determine whether the revenue recognition criteria had passed on the sale."

The side letter, the side agreement was withheld from Deloitte.

What happens next? Autonomy announces its quarterly results. They claim to be ahead of consensus. This was false because it included the Capax roundtrip revenue.

On or about July 16th, Mr. Hussain told analysts that "we don't do barter deals." You know that that's not true because this Capax deal was a barter deal.

Specifically this is the Q2 earnings presentation that Autonomy did in or around July in which Mr. Hussain or Autonomy people working with him at Autonomy are being asked by analysts "Do you do barter deals, and if so could you quantify them?"

Answer: "No, we do not do barter deals."

That was false.

Let's -- we need to jump ahead approximately six months later to a pattern that begins to emerge. Okay? In or around September 25th, 2009, Sushovan Hussain himself suggests Autonomy pay Capax even more money so Capax could afford to do another VAR deal. This is an important email in the sense that in this next time frame, in September, they're considering doing another deal with Capax for the Eli Lilly deal, and it

shows that the defendant knows that Capax cannot pay for a new deal if Autonomy does not pay Capax for the EDD services. This is clear evidence that the defendant knew debts from Capax were not collectible and revenue from Capax should not be recognized.

And that makes sense because over the course of Capax' relationship with Autonomy, Autonomy winds up paying nearly $15 million to Capax for services that were not performed.

I propose that we keep track of the deals in which Autonomy effectively paid for its own revenue, and I plan to call this the "Balance Sheet of Fraud."

And the first entry is for Capax EDD I which was paid for using the fake invoices for EDD services that were never really performed.

At the end of the quarters, we're going to go through the amount of revenue that the fraudulent revenue allowed Autonomy to use to hit its consensus estimates. The bar chart on the left is the market's expectations for Autonomy, in this case, $127 million, and the bar chart on the right is what Autonomy actually reported.

The fraudulent revenue from Capax enabled Sushovan Hussain to meet the market's consensus projections for the quarter.

This is a summary for the first quarter of 2009 based on the restatement. You heard testimony about these summaries. And it shows, based on the calculations that Mr. Yelland

described, that the revenue for quarter was falsely inflated by 11 percent. You're going to see that number go up.

In Q2/2009, there was a $6 million sale of hardware to Morgan Stanley. This is the first of the hardware deals. Before I plunge into this particular fraudulent deal, I'd like to say a few things about Autonomy's hardware sales.

For the record, there is nothing wrong with reselling somebody else's hardware at a loss as Autonomy was routinely doing. And there is nothing wrong with the way the defendant accounted for the revenue generated by the hardware Autonomy resold.

But you'll see the defendant did lie to Deloitte about whether the hardware was properly delivered, as he did in this quarter, and about accounting issues relating to the expenses for hardware, as he did in the next quarter.

This timeline begins with Mr. Hussain reaching out to his top salesperson, Mr. Egan, on or around June 18th, 2009, and saying, "Bad news. Really need to pull Morgan Stanley hardware this quarter," etc. Again, this is recurring. You'll see Mr. Hussain constantly anguishing and looking for revenue.

What happens next? On June 25th, 2009, Morgan Stanley wanted Hitachi hardware, but there was a problem with Hitachi hardware and that was, as Mr. Egan explains to Dr. Lynch and Mr. Hussain on June 25th, that Autonomy was only able to locate 75 percent of the order in the inventory at that moment. So

they couldn't even deliver all the hardware that Morgan Stanley had ordered and there is only five days left in the quarter.

As Mr. Egan explained, Morgan Stanley was expecting Hitachi hardware and he encountered problems.

Answer by Mr. Egan: "We didn't think we were going to have enough Hitachi hardware in a status called 'deliverable'."

They were having problems actually delivering the whole order. Mr. Egan explained that he talked about this problem ad nauseam with Mr. Hussain.

So Mr. Hussain suggested that Autonomy supply the hardware to Morgan Stanley from -- ready -- EMC hardware that Autonomy had bought for its own Digital Safe, even though that's not what Morgan Stanley wanted and that's not what EMS would allow Autonomy to do.

Mr. Hussain suggested -- I think we need to go to the last one. Mr. Hussain says, "We're looking to supply the Morgan Stanley hardware from the EMC hardware that we bought, but there are problems with that strategy."

Mr. Sullivan, in his testimony, explained that 9 million worth of EMC hardware should not have gone to Morgan Stanley. He did not expect it to. And that there were no discussions with Morgan Stanley, and EMC would have to authorize them to use the EMC hardware to give to Morgan Stanley, none of which happened.

Nevertheless, Mr. Hussain persists and has Mr. Egan modify

the Morgan Stanley invoice. And specifically, they put in this ambiguous language about bulk premium mass storage devices. Now, the invoice can support revenue recognition in a sense because it's ambiguous about what the type of hardware is that that's actually being delivered.

But there's another bigger problem that is a real problem to the revenue recognition here and that is that the hardware was not delivered.

In or around this time period, they modify -- Mr. Sullivan -- Mr. Hussain asks Mr. Sullivan to modify the invoices, the pro forma invoices, with regard to the language that suggested that the hardware has not been shipped. You'll see in the lower right-hand corner, it says, "Invoices will be revised -- will be revised once order is shipped." Okay. Watch that language.

Mr. Sullivan testified that he was modifying these pro forma invoices at Mr. Hussain's request.

Okay. The problem is that the hardware hadn't shipped and Mr. Hussain knew that. If we look at this email on July 13th, this is 13 days after the close of the quarter. Mr. Chamberlain is looking for a confirmation that the hardware was shipped, and Mr. Sullivan is writing back to Mr. Hussain, and Mr. Chamberlain saying, "No, hardware has not been shipped."

And so as a result, they have to falsify the pro forma

invoices and remove the language about how it will be shipped, and now Mr. Hussain has something that he can use to say that the hardware was shipped, even when it wasn't.

This is the first of the audit committee reports. It describes this transaction, which Deloitte looked at carefully. Specifically the audit committee report says -- represents that shortly before the quarter ended, Morgan Stanley purchased 6 million of hardware from Autonomy, which Autonomy sourced through EMC. That is misleading because Morgan Stanley bought Hitachi hardware and not EMC hardware.

In the management rep letter, Mr. Hussain confirms that the hardware has been dispatched or delivered. That, as you can see, was false. He's lying to his auditors about this key component of revenue recognition around delivery.

Antonia Anderson said as much in her testimony when she said -- is the representation about the dispatch of the -- of the hardware relevant?

"Yes," she said. "This was a significant transaction for the quarter. Approximately the materiality level that we had not been able to obtain, the third party evidence, such document from EMC or from the customer confirming delivery had been made, so we, Deloitte, were relying on management representing that the dispatch had happened."

"If it hadn't happened, would this be relevant," she was asked.

Answer: "Yes. If the hardware hadn't been dispatched by that date, the revenue criteria wouldn't have been that, so the revenue on the deal shouldn't have been in the quarter."

You need to deliver the hardware in order to recognize the revenue. That did not happen here. Mr. Hussain knew it and he lied to Deloitte about it.

As a result, he was able to claim record quarterly and half-year results. That was a false earnings announcement because it falsely included the Morgan Stanley revenue.

And if you look further in the evidence, you'll see clear evidence that the hardware doesn't really ship until weeks later. The EMC hardware ships in or around late July and early August. And the Hitachi hardware ships in or around mid August.

As a result, that revenue was bogus, and it should not have been recognized, and Mr. Hussain knew it.

We've put it on the bar chart here in orange because it is both a form of hardware revenue that is depicted elsewhere in yellow and it should not have been -- it should have been adjusted, but, in fact, it wasn't because the delivery failed.

The reason it wasn't adjusted, well, I think at this point the jury in this case has gone a little deeper than even the restatement accounting. There is clear evidence that this deal should not have been counted because the hardware was never delivered.

As a result, Autonomy's financial reporting for the quarter was falsely inflated by about 12.3 percent, and if you include the resold hardware, by about 15.5 percent.

Let's go to now Q3, Q3/2009, and the $37.6 million sale of hardware and the way it was a form of managed earnings by Mr. Hussain in order to meet his revenue targets. Let's begin with a baseline about trade payables. This is the Q2 figure that Autonomy announced with regard to its trade payables, and you're going to see that that number is going to jump way up in this third quarter 2009.

The evidence in this case shows that Mr. Hussain needed lots of hardware revenue in Q3/2009 basically because of the economic downturn and the reduction in demand and that Mr. Sullivan was very confident he could help Mr. Hussain get in it.

In this email, Mr. Sullivan is saying that "I am confident that I can deliver all the revenue you need per our discussion at Loudham. I have verbal commitments for 20 million and could probably get twice that if you want it."

The problem with the hardware is not the revenue. The problem with the hardware sales is what it costs. And this email makes it clear that as early as mid August, Mr. Hussain is working closely with Mr. Chamberlain about these cost issues around cost of goods sold, COGS, versus sales and marketing.

Hardware revenue is fine if you don't mind losing a ton of

money to sell it, but properly accounting for the hardware expense would reveal what they were doing, so they falsified the accounting for the expenses. They tell the auditors that it was all for marketing. They tell the market that it was all for this SPE launch. Neither of that was true.

And as a result, what you begin to see is sort of a -- a hurried-up effort with regard to this new SPE launch that you heard about from Mr. Lucini and Mr. Blanchflower. In or around late September, Mr. Hussain is again concerned about the revenue. He says to his boss, Mike Lynch, "Yesterday was very bad," etc. "Am at 189 million to 190 million with 30.7 million of EMC stuff." He is really banking on the ability to sell all this EMC hardware.

Couple days later, Mr. Hussain basically says the same thing. He says to Mike Lynch, "With 41 million from EMC related, I'm at 20 million plus," but at the bottom, "U.S. IDOL is weak." The demand for their top product is weak. And that -- that becomes a real source of -- of concern and a problem for Mr. Hussain.

Let's take a look at the explanation that Mr. Hussain gives to Deloitte for the hardware sales. At the top, he says in the part of the -- the work papers for Deloitte that the hardware sales in the current quarter are $36.6 million in revenue. And down below, consideration of the treatment of the costs relating to the hardware sales, "The hardware-related

element in the current quarter, cost of goods sold balance, is 17.1 million. There has also been a contribution to sales and marketing of 28.4 million." So for this deal alone, 36.6 million in revenue comes at a $45.5 million expense.

This is causing Mr, Hussain some anxiety and concern about how he's going to manage the disclosures of these costs to the marketplace. He says to Mike Lynch in or around October 2009, "Mike, I'm burnt out. Given my anal nature, I'm spending all my time awake and asleep worrying about the 10 minutes on Tuesday where I have to answer the analyst questions and I'm not doing anything else. I need you to take the questions this time around unless they are really easy. I don't want to deal with the analysts anymore."

Dr. Lynch says, "Relax, it will be fine."

Okay. So of course he's worried. Autonomy was getting ready to be quite deceptive about its disclosures to the analysts, as you will see.

In the meantime, they announce their revenues. They lay claim to all the revenue that came from those hardware sales. And this earnings announcement is not false because of the revenue, it's false because of what is said later about the expenses.

That begins in or around the presentation to the analysts in this PowerPoint. There's the claim that the new product, the SPE launch, had a related spend of $20 million. That's

false because the expense came from the hardware, not from the SPE launch. And how do you know that? We'll get to that in a minute when we talk about Mr. Lucini and what he had to say about the SPE launch.

Sushovan Hussain, in answering the analysts' questions, had Marc Geall, another witness in this case, tell the analysts that the expenses had to do with SPE, which was not true. And eventually, as you may remember, that made Mr. Geall quite uncomfortable.

Mr. Geall's now put in the position involving -- by Mr. Hussain that he needs to follow up with the analysts about their questions. Analysts ask, "Why was there such a large jump in trade and other creditors from 80 million to 110 million?" Mr. Geall writes, "To do with SPE costs incurred late in the quarter accrued in Q3, paid in Q4."

That worried Mr. Geall. He testified that in or around this time period, he learned about a large hardware contract that caused him concern.

Answer: "It did. It was -- it was unusual as to why that would have been there and that it was a large amount of money."

"What do you mean it was unusual?"

"Well, Autonomy had built an equity story around the purity of its business model. It was a business based -- it was a software-based business modeled. It had started to build a Cloud subscription-based business which would have led to

some investment in capital expenditure around data centers, but that wasn't significant. It wasn't a huge amount. So, you know, I wouldn't have expected Autonomy to be doing large deals with hardware manufacturers."

"Why wouldn't you expect that?"

"Because it wasn't a common part of the business."

"And what about the nature of the contract, this large hardware contract, and the amount, if anything, caused you concern?"

"I mean, the concern to me was the quantum, the sort of the 45 million, the reason being that it was similar to the amount of additional costs that Autonomy had in Q3/2009 which had been basically credited to the launch of IDOL SPE."

"Why was that of note to you?"

"Well, as I mentioned before, IDOL SPE to me didn't feel like a new product. I thought it was a set of capabilities that IDOL already had. There was a significant amount of significant costs in Q3, so in this financial statement, the aggregate was around 45, 46 million, and over time, the similarity between those two numbers, you know, I thought was unusual and, you know, questioned whether they were related."

Question: "Mr. Geall, you testified that you were uncomfortable that the hardware sales were being -- SPE was being used to mask the hardware sales; is that fair?"

Answer by Mr. Geall: "Yes. That was the conclusion I was

coming to, yes."

"What do you mean by that?""

"Well," according to Mr. Geall, "there was, if you -- if you're recognizing the revenues at a loss, then there's a lot of cost that needs to be accounted for. You know, if this was a general course of business and it was a cost of goods sold, then that would all have gone to the cost of goods sold line, which it clearly wasn't."

So the deceptions by Autonomy directed by Mr. Hussain continue in other responses to other analysts about the nature of these costs. There's a claim at the bottom that the costs were purely to do with SPE. That was not true.

Antonia Anderson testified that this was important for her to know. Her understanding, she said, was that the costs had to do with the amounts owed to EMC. That has to do with the marketing.

"Not relating to SPE?" she was asked.

Answer: "No, not relating to SPE."

So there are a series of deceptions that are going on with regard to the accounting for the expenses of the hardware. And they belong on the Balance Sheet of Fraud. Bottom line is Autonomy is paying $45.5 million in order to get $37 million of hardware revenue.

In this quarter, the deceptions don't end there, though. There was a further form of fraud associated with the R&D

expenses that Autonomy claimed to have incurred. Again, we go back to the evidence that shows that in this time period, there was a big rush in order to do the SPE launch.

You heard some testimony about that from Mr. Lucini and Dr. Blanchflower. And in this time period, Mr. Hussain is claiming that the R&D associated with this new product, which Mr. Geall called an old product, was approximately $7.3 million. That was false.

How do you know that Mr. Hussain's representation about R&D were false? Dr. Lucini said -- testified as follows:

"There is a statement at the bottom of the summary, which was the summary we just looked at, that says that the development of SPE costs approximately 7.3 million. Do you see that?"

"I do."

"Is that figure consistent with your recollection of the costs associated with the SPE launch, Mr. Lucini?"

Answer: "It is not."

"Okay. Is it too large?"

Answer: "It is."

Question: "How much larger than that -- how much larger than what you observed is the $7.3 million figure?"

Answer by Mr. Lucini: "My observation is, as we said, maybe a hundred thousand dollars. Maybe $70,000 was what we spent in pure costs just looking at the amount of people that

worked on it, so it feels very, very large compared to that."

We went through the math with Mr. Lucini that went all in the costs associated with R&D. He over-included and calculated at a hundred thousand dollars. Mr. Hussain is saying that they really were $7.3 million. Why would he do that? He would do that because of earnings per share.

This is a chart that we prepared with regard to the claims about R&D capitalization. So Mr. Hussain -- Mr. Hussain tells Deloitte that the -- he calculates the operating expenses, he calculates the net profit based on the false figure of $7.3 million. Okay?

The reason he does that is the resulting earnings per share are better, 15 cents per share. If he had used the correct figures, that earnings per share figure would be much lower, 12 cents per share.

As a result, the Q3 earnings announcement is falsified. You see that here. Because it falsely depicts the correct earnings per share. And in the earnings call that Mr. Hussain was so worried about, you see a false claim here that the increased R&D increased sharply in Q3/2009 to 11.7 million as the new product reached commercial exploitation phase and so we're required to capitalize it more. He's saying that the costs came from the new product, SPE, and that was false.

As a result, all this hardware is -- is passed off as proper revenue and Autonomy is in a position to claim that it's

actually met its consensus estimates for the quarter.

If you work through the full amount of the adjustments in the quarter, that revenue was inflated by 5 percent, and if you include the hardware, it was inflated by nearly 25 percent.

That brings us to Q4/2009. That was a busy quarter. There are a lot of deals that have a lot of problems with them, beginning with this Morgan Stanley restructuring deal which was basically a form of a roundtrip. Mr. Egan testified about the basics of the deal when he put in the summary chart -- this is just a demonstrative. I don't believe this is in evidence. But it gives a clear picture that Autonomy took an existing deal of 34 million in revenue over time and they accelerated it so that they could recognize 12 million up front, but they reduced the total amount Morgan Stanley had to pay by just less than $5 million. All of that just to recognize a little bit more revenue up front.

Mr. Hussain, when he's selling this deal -- this is a deal he was directly involved in trying to negotiate with Morgan Stanley -- makes it pretty simple what he's doing is quite simply "sign and save." That's his pitch to Morgan Stanley.

And what gets circulated to Morgan Stanley is this restructured Digital Safe deal, and the key point about this document is that -- two key points. First, the price is fixed. It's a $12 million deal. They've settled on the price. But when they describe the software and what's being sold, there is

no mention of SPE. This is all the way -- two days, three days before the end of the quarter on December 28th. No mention of SPE.

What happens next? In this time period, Mr. Crumbacher is circulating within Autonomy the following direction. Autonomy has just launched the SPE product and Crumbacher tells everybody the following:

"For IDOL deals for over a quarter million dollars in license fee, regardless of whether the rep asks for it in the request or not, please include SPE Basic as part of the software product or description." Regardless if the customer asks for it, put SPE into the deal. Why would he do that? Let's take a look.

This is the first of Mr. Hussain's spreadsheets. I submit to you that's an important piece of evidence to show exactly what Mr. Hussain knew and when he knew it. At this point, he's tracking this deal and he says that "the Morgan Stanley deal is coming in at $12 million, but it's risky," according to his notes.

What happens next? What happens next is that at the very bottom, you'll see a listing of the -- of the hardware. On -- excuse me. Of the software. On December 31st, it now includes for the first time, including SPE Basic. Same price, $12 million, but now it has SPE in it. Hmmm.

Deloitte is told that the SPE justified the $12 million

price, when it didn't and the documents show you that it didn't. Morgan Stanley had basically agreed on that price without SPE. And yet that's not what Deloitte was told.

Ms. Anderson was asked questions about this, about -- specifically about Mr. Crumbacher's email and about giving away SPE gratuitously.

Question: "Was this information that was made available to you during the course of your audit?"

Answer: No."

"Was it relevant?"

Answer: "Yes."

"Why?"

"So in the Morgan Stanley deal, it was described to us at Deloitte that the value of the software is in the SPE product. But this email indicates that it's being included in contracts even though the customer doesn't want it or know about it."

Question: "If Autonomy is injecting SPE into a contract gratuitously, why does that matter?"

Answer: "So it wasn't our understanding that that was the way the contracts were being structured."

"What was your understanding?

Answer by Ms. Anderson: "That SPE was a product that customers were valuing and paying for. That would justify it, but that's not what happened."

This is the -- the year-end earnings announcement. It's

false because it includes the revenue from Morgan Stanley based on that deception to Deloitte. And the deception is compounded by Dr. Lynch in his statements in the earnings call with analysts in which he says one of the aspects of SPE is that it was the key winning differentiator in a $12 million deal. He's talking about the Morgan Stanley deal, and that's not true. That's not what happened. That was a lie.

So the Morgan Stanley deal goes on the Balance Sheet of Fraud.

How much did Autonomy pay? They originally had 34 million from the deal. And how much did they get? They got 29 million instead.

Let's go to the $10 million MicroTech/Discover Tech roundtrip. This all happens in the context of the acquisition of MicroLink that is happening in or around this time period.

I think in order to understand all the relevant pieces of this, we have to go way back in time to 2004. At that time, Sushovan Hussain clearly knew that MicroTech and MicroLink were related. Down below, Mr. Cronin is writing that the company is partially owned and is sponsored by MicroLink. He is talking about MicroTech. And "Dave Truitt has requested that we allow MicroTech to become a reseller and I think it is a good idea," etc.

Up above there, Mr. Hussain is learning from this person, Jody Irwin, "Tiny reseller MicroTech, who wants to be our

partner, has no D&B report relating to their creditworthiness on which to base credit evaluation. John seems to think that MicroLink would be willing to provide a guarantee," etc.

The key piece is that Mr. Hussain knows early on that Mr. Truitt is the link between MicroTech and MicroLink. These are related businesses. And he does not disclose what he knows later in time, as we'll see.

So in this -- in November, 2009, Mr. Hussain is negotiating with Mr. Truitt about the acquisition of MicroLink, and it's clear, based on their discussions, that they're contemplating what does eventually happen, a $55 million acquisition, 10 million of which is used to pay for software sold by Autonomy to Discover Tech. So the $10 million part of the deal is part of the $55 million that Autonomy is paying for MicroLink, and Dave Truitt made that abundantly clear in his testimony.

Mr. Truitt said, "We settled on a number of 55 million with an agreement that the new entity was going to purchase some Autonomy technology that we could utilize within our product at Discover." That's the new business he is starting, Technologies.

"Did you settle on an amount for that product that new company would acquire?"

"We did."

He's talking about his negotiation with Mr. Hussain. It

was a $10 million order.

"So explain to me how that related to the $55 million purchase price from MicroLink?"

"Well, if we didn't do the first deal, then I wouldn't have had the money to buy the software."

So these two deals are related and the money for the 10 million is coming from the $55 million acquisition paid by Autonomy.

One of the reasons Autonomy might consider doing this is to wipe off or write off the debts that MicroLink owed to Autonomy at this time, and you see emails emerging in this early December time period about the need to write off some of these MicroLink debts.

Mr. Hussain knows that because of emails like this on December 16th in which the full amount that MicroLink owes to Autonomy is being disclosed. Sushovan Hussain knew how much MicroLink owed and it matters because Autonomy is effectively buying its old revenue by acquiring MicroLink.

What happens next is they close the deal at $10 million at the end of the quarter. And what happens after that is that Autonomy buys MicroLink for $55 million and the defendant conceals from the auditors that some of the $55 million is going to be used by Dave Truitt in order to pay for the $10 million VAR deal.

Antonia Anderson testified about how she did not know

about this as follows:

Question: "Why would it matter if Discover Tech was paying for the 10 million in software from the proceeds of the acquisition?"

Answer: "So it would, depending on the circumstances, that the accounting for the sale to MicroTech and the acquisition would be treated as separate transactions. Or if they were connected, this would be treated as just the net amount so the revenue wouldn't be recognized and the acquisition costs would be lower."

If they knew about the connection, they, Deloitte, knew about the connection between the 10 million would have to be netted and it would not be recognized.

That's why Mr. Hussain is careful to lie to Deloitte about the relationship between Discover Tech and MicroLink. In this audit committee report, he claims, falsely, "Management is not aware of any related connection between Autonomy, MicroLink and MicroTech." There was a relationship and Mr. Hussain knew it. And he doesn't disclose it to the auditors. He deceives them.

Ms. Anderson is asked, "If there was a connection between MicroLink and MicroTech, what difference would it make?"

Answer: "Because it would have changed the circumstances that we were aware of. We would have had to re-review the revenue criteria on the sale of MicroTech and understand more details about how that could be standalone transactions given

the common ownership and how they negotiated."

There could have been a netting of the revenue and the revenue would fail.

As a result of this, Autonomy is able, Mr. Hussain is able to falsify its revenues to the tune of $10 million in this press release which otherwise would have represented a miss for Autonomy if they had not included that revenue.

What happens after this is important to what happens later on and that is the MicroLink debts are written off. In or around this May time period, a little bit further along, you'll recall the testimony about the dummy cash that Mr. Rizek testified about in terms of MicroLink's books, and what's happening is that the MicroLink debts are being written off by Autonomy.

Mr. Rizek testified that he said he wouldn't -- that Mr. Chamberlain told him that he couldn't keep the Autonomy assets "on our books" and that they had to be written off.

Describing this posting of dummy cash, Mr. Rizek said, "My understanding is that their accounting system would allow either writeoffs or posting of cash and they chose to post the dummy cash as a way to write off these debts."

Mr. Yelland, when he testified, verified the same thing. Years later when he's looking through the general ledger, he found clear evidence that the $16 million had been written off by Autonomy.

So this $10 million roundtrip also belongs in the Balance Sheet of Fraud. Autonomy is basically paying an extra $10 million to Mr. Truitt in order for -- to receive $10 million in revenue as a result of the roundtrip.

What else belongs on the Balance Sheet of Fraud is that 15.9 million of MicroLink's debts are being written off. That's essentially Autonomy buying $15.9 million of deals that should have been paid to Autonomy but weren't.

In Q4/2009, there was an $8 million FileTek deal involving the roundtripping sale of StorHouse in exchange for Autonomy's software sale to FileTek. You see Mr. Hussain calculating what he can get from Mr. Hussain -- excuse me -- from Mr. Loomis and FileTek in a spreadsheet. He's planning on recognizing 8 million on December 29th.

Let's take a look at what happens next. I submit to you this exhibit, 2928, is an important email that shows you exactly what Mr. Hussain knows is going on. In this email on December 29th, both the price of the purchase of FileTek software by Autonomy and the collectibility of the sale of Autonomy software by FileTek are being discussed in the same email. This is evidence that Mr. Hussain knows perfectly well that these two deals, these reciprocal deals, are in fact related.

Mr. Egan said in his discussions with Mr. Hussain he made that clear.

"What type of deal did you think this was?"

Answer: "A quid pro quo deal," said Mr. Egan, "and a deal where FileTek got enhanced a big OEM license from Autonomy and Autonomy bought a big chunk of FileTek's software to use in Digital Safe."

According to Mr. Egan, these deals were definitely related.

"Would one deal have happened without the other, do you think," he was asked.

Answer: "No."

"Were the deals related?"

"Yes," according to Mr. Egan.

And as a result, the deals go through. Autonomy sells $8 million to FileTek of its software, and at the same time, right around the same time, Autonomy buys $10.3 million from FileTek. I'd say that's a pretty good deal. A $2 million profit for Bill Loomis at FileTek.

The problem is that Mr. Hussain knew that these deals were linked and he did not tell Deloitte that. In the audit report down below, he says, "We involved a member of our IT specialists to ensure that the software purchased" -- that would be from FileTek -- "made commercial sense and was not in any way linked to the sale of Autonomy product to FileTek." That was false and Mr. Hussain knew that it was false and he lied to Deloitte about that.

Ms. Anderson was asked if the deals were related, what difference it would make, and she says that (reading):

"It was our understanding at Deloitte that Autonomy had gone through a process to purchase the FileTek software and that the quotes they received demonstrated value associated to the purchase. If there were different circumstances, then that could have resulted in different accounting."

As a result, again, the press release is falsified in the amounts that included the FileTek revenue and the balance sheet of fraud goes up further now including the $10.3 million that Autonomy is paying for $8 million of revenue from FileTek.

In the fourth quarter of 2009, there was a $10 million deal with Capax. Again, this is the EDD II deal and there's a related Capax VAR deal involving Eli Lilly that emerges in this sequence of events here.

On December 29th, 2009, Mr. Hussain is banking on approximately $6.5 million from Capax. I think that's important because that's not what winds up happening, but that's what he's expecting on December 29th.

Mr. Hussain writes on December 29th that he needs -- he's directing that Autonomy add 250,000 to the further EDD invoices. These e-mails, I submit to you, are pretty important in the sense that Mr. Hussain needs to reload Capax so it can pay for another deal. You see this bumping up of the EDD

services at exactly the same time that Capax is being asked to take another deal.

Again, Sushovan Hussain knew that Capax could not pay and, therefore, he has to pump money to Capax for them to pay for the Autonomy software. That is a roundtrip and that is buying your own revenue.

So Mr. Baiocco said that at this point he didn't really need any more of the EDD software, but he did the deal anyway; and he also emphasized that at this point he was still not able to do any of the eDiscovery services but, nonetheless, Autonomy continues to pay Capax for services that are not being performed. Mr. Hussain would know this because he's raising that amount in order for Capax to be able to pay for a new license.

This is the related Eli Lilly VAR deal for $6 million. We'll see why that comes into the picture in just a second.

This is the $4 million sale of the EDD to Capax.

So now the figure is up to around $10 million, and you see that emerge on Mr. Hussain's spreadsheet. Now on January 1st, in order to make his quarter, he's listing both deals for a total to Capax of 10 million bucks.

As a result of this, Autonomy again announces its revenues. The announcement of the revenues is false because it included Capax revenue that Sushovan Hussain knew he could not collect from Capax without actually paying for it.

He, Mr. Hussain, then writes the management rep letter, which is false, because he's assuring that (reading):

"All accounting records have been made available to you for the purposes of your audit and all transactions undertaken by the group have been properly reflected and recorded in the accounting records."

That's not true because there was essentially an oral promise to Mr. Baiocco that Autonomy would pay for products acquired by Capax. Mr. Hussain knew that. This was a roundtrip. That statement was false.

And Ms. Anderson drives that point home in her testimony when she's asked (reading):

"**Q.** Were you aware of any of the side agreements with Capax?

"**A.** No.

"**Q.** If there was a side agreement, would that matter?

"**A.** Yes.

"**Q.** Why?

"**A.** Because it would have changed the subject of the agreement as we understood it.

"**Q.** Does it have a bearing on the transfer of the risks and rewards?

"**A.** Yes.

"**Q.** Does it have a bearing on collectibility?

"**A.** Yes."

If the auditors had known all of what Mr. Hussain knew, this revenue would not have been recognized.

E-mails like this you could reasonably infer corroborate that Mr. Baiocco really was expecting to be paid by Autonomy for what he needed to pay for the revenues.

Here he's complaining to Mr. Kanter that he'd been promised a dollar-for-dollar for any of the deals that he bought. He's expecting Autonomy to pay Capax so Capax can pay Autonomy, and that's why this deal also belongs on the balance sheet of fraud.

Let's go to the Q4 2009 $2.2 million Sales Consulting deal, end user Poste Italiane.

What you see, pay attention to these, if you would, these Italian VAR deals involving Corrado Broli. There's some very interesting things that are happening at the very end of the quarter with these deals and this is an example of that.

On the last day of the quarter, Mr. Broli is informing people within Autonomy that he doesn't even have a VAR for the deal that he would like to include in the revenue. In the VAR agreement at the bottom there isn't even the name of a VAR.

Nonetheless, this deal is on the spreadsheet for Mr. Hussain on January 1st, but it's listed as not being closed and Mr. Hussain knows it's not closed on January 1st. On January 1st, Mr. Hussain knows this deal is not closed. You would expect it not to be recognized as revenue and, yet,

that's exactly not what happened. This deal gets recognized as revenue. Let me show you how.

Mr. Hussain has a problem on January 4th. He needs to get his revenue up to 223 million even though it's four days after the quarter. You would think that would already be done one way or another. It hadn't.

And so if you look closely at the spreadsheets, you see Poste is finally now closed on January 4th four days after the close of the quarter. Why would that happen?

Okay. One of the reasons is that Mr. Hussain still needs more revenue, and you know that from an e-mail like 519, which on January 5th shows that Mr. Hussain is at nearly 222 million but looking for an extra 1 million in revenue.

On or around January 5th, Sales Consulting is finally listed as the VAR -- on the VAR deal five days after the cutoff is concluded.

And in the Audit Committee report, Mr. Hussain claims that it's good revenue when it wasn't. It was backdated and packed into the prior quarter. Mr. Hussain included Sales Consulting in Autonomy's revenue for the quarter, but Deloitte -- and this is an important point with regard to this claim of reliance by Mr. Hussain on Deloitte.

This is a situation in which Deloitte did not agree that this Italian VAR Sales Consulting was creditworthy enough, could in fact pay the amounts of money associated with the

deal. So Deloitte is disagreeing with Mr. Hussain because of the uncertainty of collectibility for this new Italian VAR but, importantly, Mr. Hussain recognized the revenue anyway. Mr. Hussain did not rely on Deloitte's advice here.

We go to the press release announcing earnings. Again, it's falsified because it includes this revenue.

And if you take a close look at the management rep letter, Mr. Hussain is falsely claiming that all of the statements that he's given to Deloitte are true and accurate through the 31st of December 2009. That was false because it was backdated and it was backdated within Autonomy. This is a deal that you can't blame on Stouffer Egan, that's for sure.

And what happens with Sales Consulting -- this is going to be a common theme too -- it gets written off during the dark period after the HP acquisition and before the HP deal closes. This deal never gets paid and belongs on the balance sheet of fraud.

And that brings us to the MicroLink/Discover Tech deal. There's been a lot of testimony about this $2.3 million deal. I think this timeline really begins with the fact that Mr. Hussain at the end of the quarter -- excuse me -- now on January 1st, the day after the quarter, is obviously looking to get $2 million more. He still needs more revenue even though the quarter has already ended.

What happens next? Mr. Hussain claims that he forgot to

add a $2 million deal that was closed but the paperwork's outstanding. Sorry. That's what he says to Mr. Chamberlain.

As you'll see, that statement within this e-mail was not true and Mr. Hussain knew it. Why would Mr. Hussain write an e-mail that is misleading like this? I submit to you that this is an example of Mr. Hussain writing his own false pretextual e-mails.

Why is that the case? Well, this takes us into some of the phone records and the dialogue he had with Alan Rizek. That's happening on or around 9:30 on January 1st in London. Mr. Rizek testified about how he was in his home in Virginia when he had a conversation with Mr. Hussain, and Mr. Hussain asked him (reading):

**"A.** I was directly asked could we take another deal at risk.

**"Q.** Who asked you?

**"A.** Mr. Hussain.

**"Q.** Can you recall for us as best you can, first of all, what date it is?

**"A.** This was January 1st.

**"Q.** When does the quarter end?

**"A.** December 31st.

**"Q.** Was Mr. Hussain asking you to take another deal in Q1 or Q4 2009?

**"A.** My assumption" -- according to Mr. Rizek -- "Q4 2009.

**"Q.** When he asked you whether or not you would take another at-risk deal, was that something that came to you unexpected during the course of the call?

**"A.** Yes.

**"Q.** Why is that?"

Mr. Rizek made it crystal clear the quarter was done. They shouldn't be talking about doing a deal after the fact and backdating it, and yet that's exactly what happened.

As a result, then, you see the MicroLink paperwork is being put together but it's being put together on January 4th, 2010, four days after the cutoff. The paperwork wasn't done as Mr. Hussain claimed. Nonetheless, Mr. Hussain goes to Deloitte and says that Autonomy should recognize the revenue. Revenue should never have been recognized because it was backdated.

Mr. Hussain claims falsely in the Audit Committee report that there was a second deal for 2.3 million that was sold to Discover via MicroLink shortly before year-end. You know based on the documents alone that that is not true. (reading)

"Management is not aware of any related party connection between Autonomy, MicroLink, and MicroTech."

Again, that is not true and Mr. Hussain knew it was not true. Mr. Hussain is lying to Deloitte in order to recognize this revenue.

Ms. Anderson explained why this is a problem (reading):

**"Q.** And is that what Autonomy management told Deloitte

with respect to the 2.3 million?

**"A.** Yes.

**"Q.** If the deal was reached after year-end, would that make a difference to revenue recognition?

**"A.** Yes.

**"Q.** Why is that?

**"A.** The revenue criteria wouldn't have been met and the revenue might not be recognized in that period."

The press release is false because this revenue didn't belong in there, and the statements to the outside world and to the analysts who read the website for Autonomy are also false. Here there's a false claim that (reading):

"Did Autonomy make sales to MicroLink in Q4 2009?

"No, not true."

You just saw one. And the answer given by Autonomy and Mr. Hussain in his meetings with the analysts is constantly referring them to the website, Autonomy says (reading):

"No. There were no Q4 2009 revenues from MicroLink."

That was not a true statement.

What happens to MicroLink? You already know what happens to MicroLink and all of its debts. They're written off. Okay? They were part of the big write-off that included the dummy cash entries and the write-off with all of MicroLink's debts.

And as a result, if we step back and look at all that happened in Q4 2009, you see a massive amount of fraudulent

revenue that takes a quarter that would have been a clear miss and just allows Autonomy to eke out just above the consensus estimates for the year all based on fraud.

According to the restatement, the percentage of fraudulent revenue in this quarter was 27.1 percent; and if you add in the concealed hardware, it's up to 31.3 percent.

Now, let's pause for a second and let me ask you to remember the testimony of Matt Stephan. Mr. Stephan had a lot of problems with these VAR deals. He testified as follows (reading):

**"Q.** Based on what you're seeing without these reseller deals, what kind of miss, if you will, would Autonomy have had at the end of 2009?

**"A.** It would have been at least 10 percent, upwards of 20 percent I think.

**"Q.** What sort of concerns did that cause for you?

**"A.** It was a concern that these deals were only being done to get to that revenue figure" --

I think that's a pretty astute point based on the evidence we've seen. Continuing (reading):

-- "that they were a problem on many fronts from an audit perspective, from ongoing credit collection perspective, so we wouldn't want to have anything to do with them if we didn't need to hit the number.

**"Q.** Mr. Stephan, do you have a recollection of your

conversation with Mr. Chamberlain?" Where he starts complaining to Mr. Chamberlain about these VAR deals.

**"A.** It was the same, the same as the conversation we had previously, that these deals were, you know, garbage. They were not worth the paper they were written on, and I wasn't happy to front them up as a good -- as good deals to our auditors."

He was embarrassed to go to his prior employer Deloitte and front up or advocate for these bad deals that he knew should not have been recognized. (reading)

**"Q.** What did Mr. Chamberlain say in response to you?

**"A.** He said that it's not his -- it's not our call" -- meaning him and Mr. Stephan -- "It's Mr. Hussain's call and we just need to do our job and put it to the auditors.

**"Q.** Did he say anything about Mr. Hussain ordering this to happen and Mr. Hussain being responsible?

**"A.** That was always his -- always his stance. Like, troops in an Army, the general says what to do and we have to follow our orders. So, yes."

I submit to you that's exactly how it worked at Autonomy, and the direction is to pump this revenue in even though it is bad revenue.

Let's go to Q1 2010 and the Vatican deal. This is a pretty straightforward deal that is a problem in terms of the revenue. It begins with Mr. Hussain saying in March (reading):

"Stouff and I spoke - he understands now. To get to 195 and 25 cents earnings per share we need VAT" -- short for Vatican -- "and Stouffer's deals."

And what you have -- what's interesting, is that after the quarter is closed on April 1st, 2010, you have a listing of the reseller deals and you don't see any reseller deal for MicroTech/Vatican and, yet, that's what winds up happening. Mr. Hussain would know based on an e-mail like this that MicroTech/Vatican was backdated.

They agree to circulate the Vatican deal. This is -- it's being circulated on April 1st. It's for a whopping $11.5 million. And when it gets circulated on or around April 1st, you know from the evidence that it was not signed. It is still waiting for a signature after the cutoff.

What happens next is it gets signed by Mr. Steve Truitt who told you about why he signed it (reading):

**"Q.** When was the deal -- when did MicroTech actually enter into this deal, Mr. Truitt?"

Answer by Steve Truitt (reading):

**"A.** April 1st, 2010.

**"Q.** All right. Had MicroTech agreed to do this when MicroTech -- when did MicroTech agree to do this?"

Answer by Steve Truitt (reading):

**"A.** I expressed a willingness to do it to John Cronin that week. I put my signature on April 1st."

Answer by Mr. Truitt (reading):

"I mean, I was no longer feeling like if these deals didn't close that provenance wasn't going to be made and make it so that we could pay these debts.

**"Q.** Meaning that you were really on the hook for the debts to Autonomy?"

Answer, tellingly by Mr. Truitt (reading):

**"A.** No.

**"Q.** Why not?"

Answer by Steve Truitt (reading):

**"A.** Because Autonomy was going to work with us to make arrangements to pay these debts with money that we didn't have to go -- we didn't have to go make elsewhere."

Again, that's a piece of testimony that I think is very clarifying with regard to the extent to which MicroTech and Steve Truitt does not think he's going to have to pay Autonomy, doesn't have to pay for these debts and, nonetheless, is taking an $11 million deal.

Here's the paperwork that Mr. Hussain submits to Deloitte. It is not true in the sense that MicroTech will be working directly with another third party with respect to this deal. MicroTech had no involvement in the Vatican deal, and that's exactly what Steve Truitt said (reading):

**"Q.** In terms of the Vatican" -- he testified -- "was MicroTech making any effort to sell to the Vatican?

**"A.** No.

**"Q.** Who was going to sell the software to the Vatican?

**"A.** Autonomy.

**"Q.** Did the Vatican deal to your knowledge ever close with Autonomy?

**"A.** Not to my knowledge."

The Vatican deal, based on the trial record, is it never closed. It went to somebody else.

The earnings results for Q1 are false because they include the Vatican revenue.

And what's interesting is that nine months later at the end of December when they need more revenue from MicroTech, they engage in this ATIC deal to pay MicroTech $9.6 million because some of which gets used to pay the Vatican debt. And this is an example of Autonomy again paying for its own revenue, this time through MicroTech.

Okay. About this ATIC deal that was used in that way, Mr. Truitt said (reading):

**"Q.** Was the ATIC worth it?

**"A.** It's hard to say. It was not -- it was worth more than zero."

But then he equivocates about whether it's worth anywhere close to $9.6 million.

Okay. It was clear to Mr. Hussain that the ATIC money was being used by MicroTech in order to pay for the Vatican based

on e-mails like this where Mr. Egan is telling Mr. Hussain on January 1st, 2011, that some of the money -- "MicroTech should pay us the 6 million against the Vatican deal."

Again, Mr. Truitt's testimony that MicroTech was never going to pay because Autonomy was going to make him whole is borne out in the evidence here. This is a constant roundtripping with Autonomy money to pay VARS to pay Autonomy debts.

And what you see again and again and again is that this deal was written off in the dark period, and those debts were never -- were either written off or not collected, and that's why the Vatican deal also belongs in the balance sheet of fraud.

There's another little deal involving the Vatican Library that happens based on the evidence in Europe. This is, again, another Corrado Broli Italian VAR deal. You see that on March 29th, Mr. Broli is putting together a piece of the Vatican deal, but he says (reading):

"The partner you mentioned last night is too small."

So he's, again, having problems finding a VAR in Italy. So what happens? First they consider this Italia Brokers SPA, and you see that in the paperwork around this Auxilium deal. That's not what winds up happening.

What's essential here is that Mr. Hussain provide Dr. Lynch 22.5 million in Vatican revenue. That's what

everyone's banking on at the end of the quarter; and in order to hit that, they have to keep substituting VARS in Italy in order to close this deal, but the problem is it's happening six days after the close of the quarter.

Here, six days after the close of the quarter, they have another VAR. It's this B.E.E. Team Spa and as you'll find out, that's not what winds up happening.

On April 11th finally they settle on using a different VAR, this Auxilium Group. That's 11 days after the quarter has ended they finally settle on the VAR. There's been no deal. And this deal gets backdated into the quarter, and you see that in the reseller agreement that says March 31st. It didn't happen on March 31st. It maybe happened on April 11th.

Nevertheless, Mr. Hussain is making false representations to Deloitte about this. He's claiming that (reading):

> "We know they were expecting to receive payment from the Vatican on May 15th."

That's a reason why Auxilium would be able to actually pay the debt. That's not true. You-all know that that's not true because the Vatican never committed to pay anyone in any of these deals. They never closed the deal.

If you look at Mr. Hussain's spreadsheet, as late as April 20th -- this is the first appearance for Auxilium BAV -- $1.7 million is finally appearing way after the fact on his spreadsheet.

And Deloitte -- so let's take a look at exactly what's said to Deloitte here. This is another example in which Deloitte will not recognize this revenue for some unknown Italian VAR but, importantly, Mr. Hussain did. He has to have this revenue to hit his numbers. This is a clear example of Mr. Hussain not relying on Deloitte's advice.

The press release is falsified because it includes the backdated revenue; and as you are beginning to, I hope, piece together and remember, the deal is then written off in the dark period.

Mr. Yelland explained that ultimately Auxilium never paid for this transaction, and over time it's then provided for as a doubtful debt and then ultimately written off. It belongs in the balance sheet of fraud.

There is a second deal in Q1 2010 involving FileTek, a second purchase of StorHouse. It's also another roundtrip and an oral side deal.

In the first quarter of 2010, Mr. Hussain gets an e-mail from Mr. Egan says (reading):

"I am okay with you pitching the deal."

Mr. Hussain definitely knows what Mr. Egan is doing with regard to FileTek, and Egan says that he had a specific conversation with Mr. Hussain that he -- about whether or not the deal should be put into writing (reading):

"**Q.** Did you discuss with Mr. Hussain in this time period

not putting your promise to buy more StorHouse in writing?
"**A.** Yes, I did.
"**Q.** What did Mr. Hussain say in the topic of not putting your promise in writing, et cetera?
"**A.** He said we would agree to do it but not until later in the next quarter.
"**Q.** Was it somehow important not to put that agreement in writing, Mr. Egan?
"**A.** It was important not to put anything to do with linking the agreements in writing.
"**Q.** Why?
"**A.** Because it might sabotage the revenue recognition," Mr. Egan said, and it would have.

There's no question about what the deal really was. Mr. Loomis' notes back at FileTek make it crystal clear that Autonomy gets 9 million in exchange for an $11.5 million payout to FileTek.

The deal gets done. This is the sale to FileTek, 8.5 million bucks.

Mr. Hussain is all over this by talking to Mr. Egan about the update, and it's evidence that Mr. Hussain is paying attention to the deal. Nonetheless, he is recognizing the deal in the Deloitte work papers that include the 8.5 million in revenue for the quarter.

And Ms. Anderson says she was not aware of any agreement

by Autonomy to purchase approximately 11.5 million worth of software from FileTek (reading):

**"Q.** Would that have been relevant?

**"A.** Yes.

**"Q.** Why?

**"A.** If there had been a purchase, we would have needed to understand the value that both sides of the arrangement need to be included in order to understand the accounting."

Again, this could have a netting effect. It could change the accounting. It was not disclosed to Deloitte and it was not disclosed by the defendant.

The revenue is packed into the quarter. The earnings announcement is false, and five weeks later what had been promised is exactly what happens. Autonomy did the promised deal with FileTek. That was for $11.5 million.

In the Audit Committee report, there's a suggestion that somehow the StorHouse subsequent sales have been strong (reading):

"The first OEM purchase of FileTek StorHouse product in Q4 was limited to data volume in Q2 2010. Our CTO confirmed that data volumes were going to be executed and we negotiated an unlimited data volume OEM."

That's misleading by Mr. Hussain because it suggests that StorHouse had anything to do with the subsequent sales of

Digital Safe.

And you know that that's misleading because of testimony by Mr. Goodfellow. Mr. Goodfellow was asked about the second acquisition of StorHouse software. He was asked (reading):

**"Q.** Is there any doubt in your mind that when the second deal was done, there was absolutely positively no use for any additional volume on StorHouse?"

Answer by Mr. Goodfellow, "Yes."

And then he compared buying more StorHouse software to putting a second engine in the trunk of a car? Do you remember that testimony? He said (reading):

"Buying the software was like sticking the engine in the boot" -- that's what he called the boot -- "but it's not connected particularly and we've still got the other engine. So, yes, we've got two engines but the car is probably slower because now we're having to carry around two engines and we don't have the extra horsepower. The StorHouse software might be okay, but it's not making any difference to Digital Safe and it's not helping us, like having two engines in one car.

**"Q.** You're saying that you drop another engine into the trunk of the car but it's not giving you any extra power?

**"A.** Correct.

**"Q.** So that's what you were able to do with StorHouse?

**"A.** Correct."

This was a -- they didn't need the software. They bought it in order to pay for FileTek's acquisition of their software, and it belongs in the balance sheet of fraud.

In this quarter, again, Mr. Hussain is able to meet consensus estimates because of the fraud that we've described and without it, he would have had a substantial miss. The actual amounts of the restated revenue are in this quarter 17.9 percent, and the percentage including the hardware is 24 percent.

Let's talk a little bit more about the hardware at this point. There were a series of lies to the market about hardware, and I'd like to pause and sort of focus on some of those.

The defendant and his co-conspirators carefully concealed the scale of Autonomy's hardware sales from the market. They made false and misleading statements to market analysts about the nature of Autonomy's revenues and whether Autonomy really was a pure software company as it claimed.

As the defendant intended, the effect of this deceptive plan was to suggest that Autonomy was a high-margin, high-growth company that defied the 2008 financial crisis when, in fact, Autonomy really was flatlining like most other tech companies in the recession.

Part of this scheme to defraud involved postings on Autonomy's website like this one in which they claimed to have

a pure software model, and they're quite repetitious about their claims to have a pure software model and their disdain for selling any kind of hardware (reading):

"Historically companies that have achieved these levels often diversify into hardware."

They're saying Autonomy won't do that.

Mr. Hussain contributed to these fallacies and this deceptive practice with regard to claims of software in his own statements in the earnings announcements with the analysts where he's talking about Autonomy as a pure software company.

You'll remember the testimony about the 10 million in hardware inventory that's happening in the first quarter of 2010. Right at that very time within Autonomy, unknown to the outside, they're actually planning to sell as much as 82 million in hardware revenue in order to hit their projections. This is what's happening within Autonomy.

You add up the amount of revenue for the second quarter, 15.4 million, to the additional pipeline that Mr. Sullivan is putting together of 67 million, and you get projections in the quarter -- or in the year of 82 million in hardware revenue. That's exactly not what Mr. Hussain and others in this conspiracy were telling to the outside world.

And Mr. Lynch drives this point home when he says that -- very emphatically in response to David Toms' question. He makes the following statement about the 10 million in hardware

revenue which he describes as pipelines, and then he goes further. He says (reading):

"David, I think you have misunderstood what that revenue is. It's not hardware revenue. What it is is the selling of an appliance. So you may be familiar with the Google appliance or the Barracuda appliances. We have very little interest in just selling hardware, and consequently the revenue that goes for it is not related to the hardware cost. It's solely a component of the sale. So what we are not doing here is acting as a generic company that resells hardware, like Morse or something like that."

That is 100 percent completely untrue, and it is exactly the opposite of what was really happening within Autonomy and it's exactly what Mr. Hussain knew.

Mr. Morland and Mr. Toms both testified about the importance of this information. Mr. Morland said that if he'd known about the scale of the hardware sales, that would have had a massive impact -- negative impact on his evaluation of the company.

And he goes a little bit further and says that -- and he starts to calculate the amount of the hardware revenue and what it really means for the growth potential for Autonomy, and he says the following, this is Paul Morland (reading):

"So the 20 -- 57 million that you suggested that I

think was in 2009, if they hadn't sold any hardware in 2008, then all of that 57 million would have contributed to growth; and if you subtracted that from the software growth that they reported, you would probably reach the conclusion that the actual software business itself was not growing at all."

That's an important point. You strip out the hardware, Autonomy would not be growing at all. This is exactly what analysts do. That's exactly what analysts were not told.

Mr. Toms makes a similar point, asks some of the same kinds of questions. He says as follows (reading):

"What you're telling me is that if I take out the hardware component, then Autonomy's product revenue, rather than growing year on year, shrank quite considerably year on year and that would mean that Autonomy was performing consistent with other software companies."

If you strip out the hardware revenue, you strip out the fraudulent revenue, Autonomy is performing like the other tech companies that were hurting in the economy. It is not the exception that it seems to defy gravity and grow in the -- during the recession years.

Let's -- there has been a lot of testimony about Brent Hogenson and I'd like to cover that. I propose covering that and two more quick deals, and then we'll take a break, with the

Court's permission.

Let's go through this Brent Hogenson timeline carefully. There's an intertwining of events relating to allegations and whistleblower allegations made by Mr. Hogenson that go directly to the heart of this case. Those allegations are precisely the same kinds of issues that you're hearing in the trial evidence in this case; and Mr. Hogenson was elevating them first within Autonomy, then with Deloitte, then eventually with U.K. regulators, and at each point Mr. Hussain is lying in order to get past this.

At the same time there is a so-called payroll fraud that is happening within Mr. Hogenson's business here -- or business component here in the United States, and you see the interweaving of these two things in what I submit to you is a form of retaliation against Mr. Hogenson for raising these allegations.

The first thing that happens is this hardware revenue is going on just as we've talked about, and that becomes important for how Autonomy performs in this quarter. Mr. Sullivan says he is selling 30 million in hardware in the quarter and Mr. Hussain is going to need that revenue.

The next thing that happens is on or around June 22nd, Mr. Hogenson raised allegations of accounting fraud with Mike Lynch. He writes the CEO and says there are serious accounting issues relating to Capax, relating to MicroLink, relating to

FileTek, all of which you now know all about.

What happens next? On June 23rd, Joel Scott testifies that he learned separately about this payroll fraud. Okay? So here in California Mr. Scott is learning about this payroll fraud. These two events are not yet connected but they soon will be.

On June 25th, Mr. Scott tells his boss Andrew Kanter about the payroll fraud, and he testified that that was the first thing he did as soon as he learned, was to tell Andy Kanter about the payroll fraud.

What happens after that is in time but not yet connected, on or around June 26th, Mr. Hogenson makes some very serious whistleblower allegations directly to Deloitte. This is a very serious matter and, again, if you look closely at the Audit Committee report that has the entirety of Mr. Hogenson's complaints and allegations, Capax, FileTek, and the MicroLink acquisition are all there.

What happens next? On June 28th, Andy Kanter told Joel Scott to investigate the payroll fraud in Hogenson's Finance Department without disclosing that Hogenson had made serious whistleblower allegations.

Two days after Hogenson goes to the auditors with his complaints, Andy Kanter is telling Joel Scott to investigate Brent Hogenson on this payroll fraud issue?

**THE COURT:** Excuse me, Mr. Reeves. We actually do

have to take a recess right now because we've been going quite a while.

So we will take a 15-minute recess to five to 12:00.

Remember the admonition given to you.

(Recess taken at 11:40 a.m.)

(Proceedings resumed at 11:54 a.m.)

(Proceedings were heard in the presence of the jury:)

**THE COURT:** Please be seated.

Let the record reflect all jurors are present, the parties are present.

You may proceed.

**MR. REEVES:** Thank you, Your Honor.

So we left off that on or around June 28th Andy Kanter told Joel Scott to investigate Brent Hogenson, but he did not tell Mr. Scott that Mr. Hogenson had made serious allegations of accounting fraud back with Deloitte.

I submit to you that the sequencing of that and the failure to disclose that is probative of the extent to which this investigation of Hogenson was really a form of retaliation against him for whistleblowing.

In this time period, Mr. Hussain has to field and address the issues of accounting fraud that Mr. Hogenson has raised with Deloitte and he does that by lying to Deloitte.

On July 20th, 2010, in this Audit Committee report, he makes the following statements (reading):

"At no stage whatsoever was the rationale for this acquisition" -- talking about the MicroLink acquisition -- "to provide a vehicle to write off outstanding invoices as speculated by Brent Hogenson. This is wholly incorrect."

All of you know based on this evidence that that's exactly what did happen. All of those MicroLink debts were written off. Here Mr. Hussain is lying to Deloitte about that.

Down below that he continues (reading):

"Brent's e-mail makes reference to a number of transactions with Microtechnology (MicroTech). Management are not aware of any related party, in the accounting sense, connection between this business and MicroLink."

Again, that is absolutely false, and Mr. Hussain knows it's false. Mr. Hussain knows perfectly well that there's a direct connection between MicroLink and MicroTech and, yet, in order to get through the Hogenson allegations he lies to Deloitte about that.

So we move along. What's interesting -- what's interesting about this quarter is what happens in terms of a hit or a miss in the quarter.

In this e-mail -- or in this portion of the Audit Committee report, Mr. Hussain says that (reading):

"Management acknowledges this position and further highlights that there have been no significant software sales to resellers in Q2 2010."

So Mr. Hussain is saying that in this quarter -- Mr. Hogenson raised issues about VARS. Mr. Hussain is reassuring, I submit to you, based on this evidence, that Deloitte -- that Autonomy is not doing VAR deals. And what's interesting is that as a result, this is one of the few quarters in which they miss earnings without VAR deals. Let's see how that happens.

In this portion of the Audit Committee report, Autonomy reports that its estimation of consensus estimates for the quarter is 222 million but they are reporting only 221 million.

You see that they puff it up a little bit in their earnings announcement when they say 221 million is in line with six-month expectations, but it's not in line with Mr. Hussain's own calculation of what the consensus estimates were. It's a miss and it's a miss because they're not able to use the VAR revenue that Mr. Hogenson has raised issues with while looking at it.

What happens is a series of accusations that directly involve the defendant. First, Mr. Hussain accuses Mr. Hogenson on or around July 27th of having insufficient internal controls with regard to the payroll fraud. And Mr. Hogenson chimes right back to Mr. Hussain and accuses Mr. Hussain and all of Autonomy of retaliating against him for the whistleblower allegations effectively trumping up this payroll fraud in order to retaliate.

And what happens next on July 28th is that in the manner that Joel Scott described, management -- including conversations that Mr. Scott attributed to Mr. Hussain, but primarily to Dr. Lynch but also other conversations including Mr. Hussain -- management tells Joel Scott that Hogenson needs to be fired, and that's what happens.

Let's go to this document and pause for a second. This happens in November of 2010, a few months after all of the activity in June and July 2010. Take a close look at this. This is a settlement agreement between Autonomy and Mr. Hogenson. This is a settlement agreement in which Autonomy is paying Mr. Hogenson $750,000.

Ladies and gentlemen, you do not pay that kind of money to someone who has made false accusations. Okay? You know that that didn't happen. This $750,000 was hush money to Brent Hogenson.

This whole thing when it's disclosed to Mr. Scott makes him very, very concerned when he realizes that he's just fired Mr. Hogenson at or around the time period Mr. Hogenson is raising serious questions about accounting concerns. He said that his concerns, Mr. Scott's concerns, were heightened because of the details of the allegations made by Mr. Hogenson, and it made him concerned that Autonomy could potentially be doing something illegal. Okay? I think that was a very valid concern.

Mr. Scott went further and offered the following about the other people who got fired as a result of this alleged payroll fraud (reading):

**"Q.** After you fired Mr. Hogenson, did you fire any additional people within Autonomy's Finance Department related to Mr. Hogenson?

**"A.** Yes.

**"Q.** Who?

**"A.** Percy Tejada and Reema Prasad.

**"Q.** Why did you do that?

**"A.** Sushovan did not want them at the company anymore.

**"Q.** How do you know that?"

Answer by Mr. Scott (reading):

**"A.** Because he said so.

**"Q.** As best you can recall, what were his words?

**"A.** I recall his words with respect to -- with respect to Reema that she had raised her head above the parapet and that he wanted her gone.

**"Q.** Gone because of some affiliation with Mr. Hogenson?

Answer by Mr. Scott, "Yes."

Further evidence of the type of place Autonomy was to work at in these years.

And that brings us to Mr. Lindsell, the person from the FRRP who testified. He testified -- if we go out a little further -- he testified about how the allegations that were

raised by Mr. Hogenson made their way up to eventually U.K. regulators like the FRRP, and this is part of the defendant's and Autonomy's response to the FRRP about those allegations. I submit to you that the answers that the defendant and his co-conspirators are giving the FRRP are false and misleading.

First with regard to Capax, they say (reading):

"Capax have an excellent payment record since that date."

You know that that's misleading because you've seen clear evidence that the only way Capax can pay its debts is when Autonomy pays Capax.

You see down here there's the claim that (reading):

"As a result" -- relating to the MicroLink acquisition -- "As a result, there was no impact on the 16.25 million."

You know that that is false. You know those MicroLink debts were, in fact, written off.

And then down below there's a further discussion about the Vatican deal that suggests that the amounts to be paid by MicroTech, that they relate to one government and user who has delayed payment.

I submit to you when you look at that carefully, that's a description of the status of the Vatican deal. They're suggesting that MicroTech is about to be paid by the Vatican, and you know that's not true.

So in this quarter, this is a rare example of Autonomy actually missing because it's not able to do enough VAR deals, and it's sort of making up for the amount of hardware revenue that it -- that Mr. Sullivan was helping Mr. Hussain obtain.

Let's go to Q3 2010, and I think we can do some of these deals a little bit more quickly. This is the $10 million FileTek/Vatican -- excuse me -- Veterans Administration deal. In or around September it's already becoming clear that the VA deal is not going to close. You already know what happens when a customer of Autonomy says that it can't close. Right away Mr. Hussain, working with Mr. Egan, has to go to a VAR.

Here they can't use the usual VARS, MicroTech or MicroLink, and so they have to go to FileTek as a new possible VAR, and that's because they know they need the revenue in the quarter and they need a VAR to do it and the other VARS already have too much debt.

It becomes clear that at the end of the quarter that Mr. Hussain is desperate for this VA revenue, which he writes to Mr. Egan about, about how badly he really needs VA and the other deals.

And all during this time period, as you know from the evidence, Mr. Hussain continues to sell this low-margin hardware, but here's an example of an e-mail in this quarter where he's using that low-margin hardware in order to manage his earnings and get to a certain revenue amount probably

involving 2 million more of the low-margin hardware sales.

FileTek signs the reseller agreement. And in the Audit Committee report they talk -- Mr. Hussain essentially says that FileTek has a good payment history as a reseller. I submit to you that's misleading because you've seen that FileTek can only pay because Autonomy is buying products from FileTek in the two related deals that we already went through.

What happens with FileTek? Again, you know the answer. It's all -- it all gets written off. The VA deal never closed. FileTek got angry and never paid. Sushovan Hussain bought even more StorHouse -- that might be a third engine in the back of the trunk -- from FileTek so that FileTek could pay the debt; and he does that, interestingly enough, one day before the announcement of the HP acquisition.

You know what he's doing. He's cleaning up the books, and there is a ton of evidence here to show that he's sweeping bad deals under the rug right at the time of the acquisition to essentially cover his tracks and cover up the fraud.

The balance sheet of fraud grows longer with this deal involving FileTek.

Capax in the third quarter of 2010, another Capax deal. It's basically the same story. Amgen says, "No, we can't do it," on September 30th. That creates an immediate need to go to the VAR.

But, critically -- and please pay attention to these

e-mails -- before you can go to a VAR like Capax, what do you have to do? What does Mr. Hussain have to do? He has to reload. He has to buy something from Capax in order for Capax to be able to pay for this new reseller deal. He has to reload, using the terminology that Mr. Egan mentioned.

Amgen says no. That's okay. They go to Capax, and at this point they agree to buy more stuff from Capax so Capax has more money to pay Autonomy. Again, the money is constantly flowing in a circular way. And the reason for this is that Capax appear to be able to pay for the new deal when, in fact, it really couldn't.

Mr. Egan described these deals as being correlative because they were. They sign the VAR deal, and he goes to -- Mr. Hussain goes to the Audit Committee, and he says the following (reading):

> "Capax are up-to-date with their payments on the majority of the Eli Lilly sale discussed in Q2. Management has concluded that there are no concerns over recoverability that would impact revenue recognition."

That is misleading, ladies and gentlemen. It's misleading to say Capax is up-to-date with its payments when it's Autonomy that has been paying Capax so that Capax can pay Autonomy.

All right. They use the Capax revenue to recognize revenue and included in their quarterly earnings release. That was fraudulent for those reasons.

What's interesting and a little bit different is that in November, the sales force at Autonomy has to keep selling Amgen. They don't stop just because the deal has been sold to a reseller even though the deal to the reseller is supposed to be a final deal.

All these guys in the sales force are still working so hard and Mr. Egan in this e-mail is having to report up about all the problems he's having getting Amgen closed.

Well, Amgen was supposed to be a deal that had been sold to Capax, but that's exactly not what's happening within Autonomy. Okay?

And Mr. Egan described this as part of the hole that he felt sometimes when he described grabbing revenue out of future quarters, grabbing the Amgen revenue out of a future quarter, recognizing it in the third quarter, puts him, as he goes into the fourth quarter, into a deeper hole and he has to keep working to sell to Amgen on the last quarter's deal. Okay? This creates an extreme problem for him. I'm going to come back to that, but this is a great example of exactly that phenomenon.

Mr. Hussain recognizes the revenue -- excuse me. Withdrawn.

This is an example of the work paper in December in which Autonomy finally closes the deal directly with Amgen but it's for noticeably less money. So the sales guys finally are able

to sell the deal but it's for a lot less money.

So what happens to Capax when the deal goes direct with Amgen? I think you already know the answer to that. The deal gets canceled. They cancel the deal. And how do they make Capax whole for sitting on the revenue for about six months? Well, by March, about six months later, they pay Capax nearly $945,000 for doing basically nothing except allowing Autonomy to recognize the revenue earlier.

This is fraudulent revenue that's packed into the third quarter of 2010. The amounts of the revenue are 14, nearly 15 percent in terms of what was adjusted; and if you include the hardware, the amount of falsified revenue or concealed revenue at this point is 27 percent. They're painting a false story.

We were going to have a recess here. I will move on.

Let's go on to the fourth quarter, another pretty straightforward deal. We had the MicroTech/DOI deal. It has the same pattern that we've been talking about. It begins with the fact that Mr. Hussain is desperate for the DOI deal to close. You already know what happens. The DOI deal does not close.

And he's talking at this point in around late December that they -- he's telling Dr. Lynch that they're having a very difficult quarter.

If you write any document down, please write down

Exhibit 1274. I'm going to come back to that, and this is an important exhibit that really I think takes you into the mind of Mr. Hussain at a key time.

In this context relating to MicroTech/DOI he's saying, "We have to have MicroTech/DOI in order to hit our quarter," but DOI doesn't happen. So what is he going to do?

DOI says no, so all of a sudden you-all know what Mr. Hussain does next. He turns to a VAR. This time he turns to MicroTech and Steve Truitt.

And, again, you know exactly what needs to happen. Before you can get the VAR to buy a new license, you have to do what? You have to pay them some money so that they can pay for the old licenses that they've already bought.

That's exactly what happens with the ATIC deal for the enormous sum of $9.6 million. This is basically money that is being used to fund these new MicroTech deals and to pay some of the old Vatican debt.

And in or around the end of the quarter when they give this reseller deal to Deloitte, they again suggest falsely that the end user and the VAR currently anticipate entering into such a license agreement. Well, that can't be true because DOI said no. So how is MicroTech going to get DOI to say yes? It's another deception by Mr. Hussain.

Nonetheless, despite all this, Mr. Hussain packs the revenue into the quarter. This is the Deloitte work paper in

which Autonomy is claiming the revenue in the quarter.

And in the Audit Committee report, Mr. Hussain makes the following false statement (reading):

"Management is confident that payment will be received on the remaining amount in due course given its knowledge of the deal with the end user and its ongoing involvement with MicroTech on other new deals."

They're confident that MicroTech will repay because Mr. Hussain is confident he will be paying MicroTech and MicroTech will have the money to repay. I submit to you that that is misleading.

And, again, what always happens with these deals? They are written off, and this one is written off just before the deal closes with HP. It belongs on the balance sheet of fraud with the other bad deals.

Let's go to VMS in the fourth quarter. This is the deal with the -- in which Autonomy is selling some of the hardware that it had plugged into its own wall and which its own people were using. You can't sell hardware that's being used by your own people. VMS certainly didn't contract for that in this contract here.

Mr. Hussain is the one who's responsible for the suggestion to, quote, "repurpose" existing hardware that Autonomy is already using because, again, he has delivery problems. They can't get the stuff to VMS in time. They're

right at the end of the quarter. They need the revenue so they're going to, quote, "repurpose" computers that are sitting and plugged into the wall. That's not the way you run a major business. It's certainly not the way you recognize revenue on a hardware sale.

So Mr. Goodfellow testified about how he had to, then, figure out about the Fixed Asset Register, all the computers that Autonomy had in its stock, some in boxes, others plugged into the wall.

And what happens next is that Autonomy, Mr. Hussain, nonetheless, recognizes the revenue, says that the delivery's actually been made when that's false because much of the hardware is still plugged in back at Autonomy. It wasn't delivered. He says specifically that in this representation to the Audit Committee when he says (reading):

"Autonomy has also sold 6 million of infrastructure hardware to this customer."

That's not true. They hadn't and they hadn't delivered the computers.

So Ms. Anderson was asked questions about this VMS deal (reading):

**"Q.** If Autonomy were still using this hardware, would that be relevant to Deloitte's assessment about whether the delivery criteria was met?

**"A.** Yes.

**"Q.** Why?

**"A.** As it wouldn't be available to the customer."

Yeah, exactly that. You know, you can't pretend to sell hardware to someone when you haven't given it to them and you're still using it and, yet, that's exactly what the evidence shows.

Was the -- Mr. Goodfellow was asked whether any of the hardware was ever delivered. He said no, he didn't believe about 4 million of it was ever delivered.

And then what happens? Again, you know what happens. In this case slightly a little bit different but the result is the same. VMS goes bankrupt, these debts go unpaid, but the revenue was recognized. It belongs on the balance sheet of fraud.

This is a $6 million deal involving Tikit. This is the one with the side letter. Okay? And what's interesting is Mr. Hussain knows all about the side letter, as the evidence will show.

Again, sort of the sequence begins with he needs -- "he," Mr. Hussain -- needs revenue. It's important that we have 9 million, not 5 million from Tikit because he's desperate for revenue in one of these last quarters for Autonomy.

So this Tikit/KPMG deal. KPMG and Tikit or certainly Tikit is a little reluctant without reassurances in a side letter. And Mr. Hussain specifically says when he's talking to

Neil Araujo he's going to disclose the letter.

Okay. All of you already know that didn't happen. That's exactly not what happened. When he says the side letter will be disclosed, two things are going on, I submit to you. One, it's an admission by Mr. Hussain he knows that it should be disclosed. That's absolutely true. And, second, it's pretextual. It's misleading. It's papering his file. It's him suggesting something will happen. "Oops, it didn't happen. Oh, that must have been a mistake because I really meant to disclose it." No, that's not what happened.

You have the side letter. What's interesting about the side letter -- we have the purchase order first. I'm sorry. We've got the purchase order. Then we've got the side letter. The signature block for Mr. Hussain. It's definitely a side letter. Mr. Hussain has his confederate Mr. Kanter sign it for him.

All right. Antonia Anderson made it clear that side agreements need to be disclosed, they can't get the accounting right without them, and they weren't disclosed in this case.

Mr. Hussain falsely represents in the Audit Committee report that no revenue deals containing side letters of ongoing Autonomy performance requirements were excluded from the sales contracts. That's simply false, not true, didn't happen, and Mr. Hussain knew it.

Nonetheless, the revenue's recognized. This is a portion

of the work paper for Deloitte showing that Autonomy has claimed the revenue. It should not have been claimed in the quarter.

And you have a management rep letter. This is another lie about the same topic. At this point Deloitte is probably learning enough. You could infer from the evidence that they need to ask more specific questions about side letters, and Mr. Hussain is falsely representing that there were no side letters. It's all part of his scheme to defraud and make Autonomy look bigger than -- like it was growing bigger than it really was by lying to Deloitte along the way.

The Tikit deal is slightly different in that this e-mail in April shows that Tikit started to offset other orders against the existing balance. So it's not like Tikit is going to actually repay these sums. And that's where that deal ends.

Let's go slowly through this $3.6 million Discover Tech deal. I suggest to you that this is one of the most corrupt deals at Autonomy in this time period.

It, again, begins with this Exhibit 1274. It's crystal clear that Mr. Hussain is desperate for revenue; and at this point on December 10th he thinks he can cover with this massive B of A transaction that Mr. Egan and he had been working on in the quarter. Hmm, but you already know what happened. B of A doesn't close, and that makes any anguish or upset he feels in this moment even greater when that fails to come through.

And you see some of this in the next e-mail. On or around December 31st, Mr. Hussain is learning that B of A has said no. This is an absolute disaster for their quarter. You know what they did. Go straight to -- this time they go to a VAR, they go to Discover Tech, and they pack in 7 million with Discover Tech. Now, pay attention to that $7 million figure because that changes a little bit as we go along.

The quarter ends, they've got 7 million, and you see in the spreadsheet that is dated right at the close of the quarter that Sushovan Hussain thought Discover Tech had only $7.5 million of the B of A deal. Okay? That's where we are at the end of the quarter.

What happens next? We go to 18 days later, way later, you go to the spreadsheet and all of a sudden 18 days later BAML Extra, Bank of America Merrill Lynch Extra, pops up to the tune of $3.5 million. The first time it shows up on the spreadsheet is there, and this is Mr. Hussain packing in another revenue increment way after the end of the quarter.

You know this is entirely corroborated by the documents that show that in this time period they're circulating unsigned versions of the VAR contract. The contract is blank.

Now, Mr. Scott testified about this particular deal, and I'd like to take a moment and go through his testimony on this point (reading):

"**Q.** At some point in this time period did you note that

change in the date from January to December 31st of 2010 as a result of your conversation with Mr. Chamberlain?"

Answer by Mr. Scott (reading):

"**A.** Yes.

"**Q.** Were you concerned about that?

"**A.** Yes.

"**Q.** Why?

"**A.** Because it was January 18th, 2011.

"**Q.** And what concern was in your mind?

"**A.** The fact that this agreement would be signed and dated December 31st yet actually entered into in January. My concern was about revenue recognitions and what the intentions were in terms of taking the deal."

So what does he do? He goes and has conversations about his concern about this, and those conversations include a conversation with Mr. Hussain.

He described in some detail Mr. Scott's meeting with Mr. Hussain in which he shows him the lateness of these contracts, asks him, "Is this revenue going to be recognized?"

And Mr. Hussain essentially says to him, "I'm going to be fully transparent with the auditors about what happened here." Okay? That's what he says to Mr. Scott. That's exactly not what winds up happening.

The contract gets signed. The people at Discover Tech put the correct date. They know how to keep their records

accurately, but that was unhelpful for the type of fraud that Mr. Hussain was trying to engage in so it has to be rewritten and redone with the backdated December 31 date even though we are nearly three weeks -- going on four weeks after the close of the quarter.

In this e-mail on or around January 26, Mr. Chamberlain offers Mr. Welham a misleading explanation for why this revenue is being accounted for in this period of time, and he says that "We had not invoiced at year-end." Based on these records, based on this sequence, that was a lie by Mr. Chamberlain, Mr. Hussain's co-conspirator.

And Mr. Welham testified about the impact the unexecuted contract would have had on him and his accounting. He was shown the unexecuted contract (reading):

"**Q.** Do you see how it's not executed?"

Answer by Mr. Welham (reading):

"**A.** Yes.

"**Q.** Was this information available to you during the course of your audit?

"**A.** I had not seen this before, no."

That would be a big problem if the deal isn't executed in the quarter and it would affect revenue recognition. Nonetheless, they go ahead and recognize the quarter. It's millions of bogus revenue packed into the year-end.

If we go to the bar charts, we see that the total amount

of fraudulent revenue at year-end in the fourth quarter of 2010 almost comes pretty close to the quarterly -- withdrawn -- the total amount of falsified revenue in the quarter, 19.8 million, almost comes close to the total year materiality threshold that is identified by Deloitte.

The point is, the revenue -- the amount of revenue is staggering in terms of materiality for Deloitte's accounting and in terms of hitting or missing the consensus numbers for the quarter.

We come to the Prisa deal in the first quarter of 2011. The fraud continues. We get to the end of the quarter and at the very end of the quarter in Mr. Hussain's spreadsheet, a great, great piece of evidence showing you what's going on in realtime in Mr. Hussain's mind, Prisa is listed as out at the end of the quarter. Okay? All of you know what happens. It gets included anyway and here's why.

You see in this document that there's a list of the resellers. Discover Tech/Prisa is not on here. This deal -- no one had figured out to do this deal when the quarter had closed.

So what happens? We get to the very beginning of the quarter, another one of Mr. Hussain's spreadsheets, and early on April 1st it's still out. So what does he do? He calls Stouffer Egan. Mr. Egan testified that (reading):

**"Q.** In or around early April 2011, after the cutoff of

the first quarter, were you involved in a deal involving Discover Tech/Prisa?

**"A.** I was.

**"Q.** What happened?

**"A.** I asked Discover Tech to backdate a deal.

**"Q.** Okay. Prior to doing that, did you talk to Mr. Hussain?

**"A.** I did.

**"Q.** What happened?"

Answer by Mr. Egan (reading):

**"A.** He" -- meaning Mr. Hussain -- "called me shortly after the quarter ended and said he had to ask me to do something that we didn't really want to do" -- no, they didn't want to backdate the deal but they needed to, and that's what Hussain asked Egan to do -- "we didn't really want to do, which was to ask one of the resellers if they would take another deal.

**"Q.** To backdate a deal?

**"A.** That was implicit, yeah, take a deal for the quarter.

**"Q.** And who did that request come from?

**"A.** Mr. Hussain.

**"Q.** And did you do that?"

Yes, he did, that's exactly what Mr. Egan did. He reached out to Dave Truitt. They put together the backdated contract. It's four days after the cutoff. And they get Discover Tech

to -- they get Discover Tech to sign it.

Mr. Leach points out to me that this is one of the wires that we will come back to, the circulation of this contract by wires as part of the wire fraud that's charged in this case.

And this is another fraudulent deal. Mr. Welham makes crystal clear why. He was asked (reading):

**"Q.** If it was agreed to after the quarter, would it be appropriate to recognize revenue?"

Answer by Mr. Welham, "No."

And I think all of you understand why. You can't recognize backdated revenue in the earlier quarter.

Now let's take a close look at this e-mail. This is an excellent example of a sophisticated finance person managing earnings, I submit to you, in an illegal way. Okay?

Well after the quarter Mr. Hussain is crafting, "If we do this, then we get that. If we do another version of this, then we get that." This should already have happened. It's historical at this point and, yet, Mr. Hussain and Mr. Chamberlain are tinkering with the revenue recognition in order to hit certain targets.

This was very troubling to Mr. Welham. Mr. Welham, the auditor who testified in this case, was asked (reading):

**"Q.** Are you troubled by this e-mail?

**"A.** Yes, I am.

**"Q.** Why?

**"A.** Because it's dated sometime after the period ends, but there's still debates about what is going to be recognized, which shouldn't really be a matter of judgment because these items would either be delivered and recognized in the quarter or not. It's quite binary."

Which means it either happened in the quarter or it didn't. You can't debate it and tinker with it and toy with it afterward in order to hit certain figures.

He was asked (reading):

**"Q.** Are you familiar with the term 'managed earnings'?

**"A.** Yes, I am.

**"Q.** What does it mean?"

Mr. Welham said (reading):

"It means doing things, ultimately book things, in a particular period to meet expectations.

**"Q.** At the time of your audits, did you have any sense of the hardware sales being used to manage earnings?

**"A.** No.

**"Q.** And does that raise any issues from an accounting perspective?

**"A.** Well, this is -- this more generally raises an issue around what we're being told versus what we're seeing in the books and records."

Yeah, you bet it does. This is exactly not what Mr. Hussain is telling Deloitte and, yet, this is exactly what

the evidence shows he was doing, quite assiduously, back at Autonomy with Mr. Chamberlain.

This whole deal upsets Dave Truitt. He doesn't want to have to do these backdated deals so he comes into San Francisco and asks for a meeting with Mr. Hussain in order to confront him about being asked to backdate, which he did, but he was concerned and bothered about it.

Let's go to Mr. Truitt's description of what Mr. Hussain says in that meeting. Mr. Truitt (reading):

"Well, I started out simply saying that I was concerned, that, you know, what I experienced -- what I was asked to do with this order seemed to be out of the normal, et cetera, so I put that question to Mr. Hussain. The answer was, first of all, that Autonomy" -- this is Mr. Hussain speaking according to Mr. Truitt -- "that Autonomy was not traded in the U.S. exchange. It was traded out of the U.K. They were under international accounting rules. It was really the first time that IFRS had been brought up to me and, you know, potential differences in accounting between IFRS and GAAP."

That's what Mr. Hussain is giving to Mr. Truitt as an excuse for backdating. IFRS, interesting. We'll come back to that.

Mr. Hussain, according to Mr. Truitt, also indicated that, you know, being on U.K. exchange, that really wasn't under the

purview of the SEC. This was an international accounting and that there was some flexibility there that could account for this properly.

I submit to you, no, there's no flexibility. Antonia Anderson, Lee Welham, both came in and told you that there was no flexibility for backdating here. This is Mr. Hussain blowing it passed Dave Truitt and trying to reassure him about a dirty deal.

They recognized the backdated revenue. Mr. Hussain lies in a management rep letter that all of the revenue was done through 31 March 2011. That was not true. They recognize it in the quarter. It's part of what falsifies their earnings release because it includes this revenue.

And, again, you know what happens. Autonomy basically has to pay for this revenue, and it does it through this deal involving Discover Tech in or about June 30th, the next quarter. Right when they need Discover Tech to take more deals, they have to pay Discover Tech first in order to pay for the old deals, including Prisa.

Okay. Mr. Truitt testified that when he got the additional -- sold the additional software to Autonomy in or around June, that he understood that some of it would be used to pay Discover Tech's old debts. It's the same story. It belongs on the balance sheet of fraud.

There's another deal involving MicroTech. This is for the

acquisition by MicroTech of software known as Team Site, but there's a side deal, a clear side deal here. Let's go through this e-mail a little bit more carefully.

Mr. Hussain is saying he's desperate for more revenue. He's asking Mr. Sullivan, his hardware sales guy, to help him with that. As usual, he needs more revenue, even low-margin revenue.

So what do they do when they have trouble getting there? They have to go to a VAR. They have to go to MicroTech. They have to go to Steve Truitt. But you know already what do they have to do first? Mr. Hussain has to pay MicroTech. He has to reload MicroTech, and that's exactly what happens here.

This time they sign over -- they grant services of revenue that Autonomy was entitled to and they just give it over to MicroTech so that MicroTech has money in order to pay Autonomy for the deal. It's a side deal and it's what supports the whole transaction.

And you know enough already from Steve Truitt to know that he couldn't pay for it without that. Nonetheless, he does the deal. It's a $3.8 million deal. That's sent over.

This whole thing, again, worried Joel Scott. He was the one who was involved in negotiating and getting the side deal put together, and Mr. Scott testified that in his view, from what he could see, the deals were definitely linked (reading):

"**Q.** Is this the amount of the assigned maintenance fees

somewhere north of 3.5 million?"

That's the services fees and maintenance fees that are being assigned to MicroTech. (reading)

"**Q.** Does this amount exceed the amount of the software deal?

"**A.** It does.

"**Q.** And were the payment terms structured so that MicroTech would receive the maintenance payments before they needed to pay for the software?

"**A.** Yes, it was.

"**Q.** Are the two deals linked?

"**A.** Yes, they were."

Okay. They actually structure the payments to MicroTech so that MicroTech has enough money to pay Autonomy, and the one is getting the money first before it pays the other. It's a big circle every time.

Mr. Hussain recognizes the revenue. He lies in the management rep letter about the existence of side deals, and the deal is terminated in the dark period. Same story.

And at the very end, whatever's left over is written off again during the dark period in a credit memo. This deal belongs in the balance sheet of fraud.

Another Capax EDD III deal. This one very directly involved Mr. Hussain. Remember Mr. Baiocco's testimony about the third time he is asked to buy EDD software from Autonomy?

Let's go through the sequence slowly.

According to Mr. Hussain's spreadsheet, right at the end of the quarter they're missing a lot of revenue; and one of the reasons the first quarter contains so many fraudulent deals, you might conclude, is because according to the defendant's spreadsheet on the last day of the quarter, they're off by nearly 50 million. Okay? So a lot of things are happening. The fraud is really getting bigger, and so there are a lot of fraudulent deals in the first quarter.

Again, by the first day of 2011, Capax is not listed as a reseller on the list of resellers. So that's not there yet.

In this spreadsheet on April 1st, 2011, even with Prisa, which we've gone through, and even with the MicroTech internal-use deal, they're still short of the $220 million revenue target and they're still clamoring for revenue. You've seen this in the other two deals that we've gone through in this quarter.

So what is Mr. Hussain going to do in order to get more revenue? Well, he directly deals with John Baiocco. Let's go to what happens here.

They have a conversation in London or Cambridge and they actually meet, and Mr. Baiocco is there to talk about other parts of the European eDiscovery services he wants to do when Mr. Hussain asks him to take a backdated deal. Let's read what Mr. Baiocco said (reading):

**"Q.** Did you, in fact, have a meeting with Mr. Hussain?

**"A.** Yes.

**"Q.** Did Mr. Hussain bring up anything with you outside of the cloud deal?"

That's the other deal they were there to talk about. (reading)

**"A.** Yeah" -- by Mr. Baiocco -- "at that meeting at Cambridge he brought up that he had said Stouffer was supposed to be chasing at the end of the quarter for one of the VAR deals" -- do you see Mr. Hussain blaming Stouffer Egan? -- "and somehow he let it slip through the cracks" -- that's what Mr. Hussain said to Mr. Baiocco -- "and I denied it because we had just signed the first half of another VAR deal and our partners were" -- oh, I'm sorry. "Somehow he let it through the cracks."

That's what Mr. Hussain says about Mr. Egan. And Mr. Hussain asked Mr. Baiocco (reading):

"Would I -- you know, would I do a deal?"

Okay. This is happening on or around April 6th, well after the quarter ends, Mr. Hussain directly to Mr. Baiocco would he do another deal and backdate it into the prior quarter, which is winds up happening.

And Mr. Baiocco says (reading):

"I denied it because we had just signed the first half of another VAR deal and our partners were getting a

little edgy because they hadn't closed -- they hadn't closed out some of what -- and it started to feel like it was too much.

**"Q.** So Mr. Hussain proposed a VAR deal with you?

**"A.** He proposed it, yes.

**"Q.** Now, when you said 'end of the quarter,' do you know this date, the date of this meeting, April 6, 2011? What would have been the end of the quarter?

**"A.** March 31st."

And what's waiting for Mr. Baiocco when he gets back to his hotel in England? What's waiting for him is the unsigned contract, the EDD contract, that Mr. Hussain has arranged to get to Mr. Baiocco in his hotel room because he needs the revenue. Okay. You know what happens. Mr. Baiocco signs the deal. The deal gets recognized.

Okay. This is a -- let's pause on this e-mail because it's clear that Mr. Hussain on April 7th is writing to Mr. Baiocco and offering to send someone over to collect the signed purchase order that has now been backdated. All right? Mr. Hussain would know that because he arranged to do this.

The backdated revenue gets recognized in the -- by Autonomy in the quarter. Mr. Hussain again lies in the management rep letter about whether the financial statements are fair and true as of 31 March 2011. This deal wasn't even in existence during the quarter.

Mr. Welham testified that if it had been backdated, that would have been a problem -- probably not a surprise at this point -- and it gets included in the revenue in the earnings announcement.

And let's pause. This is a part of the staggering amount of money that Autonomy has to pay Capax over time, which equals in full scope of time approximately $15 million. Autonomy is paying Capax that amount of money to pay for all these deals Autonomy is buying its revenue. Mr. Hussain is directly steering and making that happen. It belongs on the balance sheet of fraud.

This is how they hit their numbers for this quarter, well in excess of the consensus, all based on fraud. Based on the restatement, the amount of falsified revenue is approximately 21 percent. Things are getting worse and growing, and the total amount of revenue, including the concealed hardware, is 30 percent.

Last quarter, 2/2/2011, there are two deals, one involving Discover Tech/Abbott and the other one involving MicroTech/HP. Both Mr. Hussain is desperate for. It starts with the Abbott deal. He's really urging Mr. Sullivan to get more hardware revenue going, and he makes it clear in the e-mail that he needs Abbott at $15 million. You already know what happens. Abbott said, "No, not going to do the deal."

It doesn't end there, though, does it? They come to

Mr. Truitt, ask him to take the deal. He has -- he says he doesn't really have the money to pay for it. No problem. Again, you know what happens. They do -- they essentially reload here for Discover Tech by buying DiscoverPoint Engine in the amount of $4.4 million.

What happens with that money is especially interesting. Take a look at the checks that are in evidence that show that Discover Tech is using the money to repay debts it owes to Autonomy. This is Autonomy money going to Discover Tech and making it's way back to Autonomy. Again, they execute the reseller deal in the amount of approximately $9 million. Once Autonomy has paid Discover Tech and Discover Tech has paid Autonomy, now Autonomy can sell the reseller deal.

What's interesting about this deal is that in order to accomplish that, Mr. Hussain had to even lie to Dave Truitt, who's been so helpful in so many of these deals, and he lies about the status of the reseller deal involving Abbott.

Mr. Truitt testified (reading):

**"Q.** Were you told that Abbott had said no?

**"A.** No, I was not told.

**"Q.** Would this information have been relevant to you about deciding whether to do the reseller deal?

**"A.** Yes. If I'd been presented it in that manner, I would not have been interested in doing the deal."

Okay. That makes sense. Then we go to the Audit

Committee report. It's misleading. Abbott said no -- it's misleading because it says these Iron Mountain products have been fully integrated into Autonomy's core IDOL platform, et cetera.

Abbott had said no, and the truth was that it had been sold to a reseller and after paying the reseller, so the reseller could buy it. There's really no real demand. There's a suggestion here that there is demand. There's really no real demand amongst large multinational organizations as Mr. Hussain is falsely suggesting.

Lee Welham testified about the problems associated with this when he had -- was asked about the realities of the deal (reading):

**"Q.** Did you have an understanding that Abbott had been denied -- declined the deal?"

Mr. Welham said, no, he didn't know that. (reading)

**"Q.** Did that matter? Did you have any of the information indicated in the e-mail where they said no?"

No, he didn't. (reading)

**"Q.** Would it matter?

**"A.** Yes, it would matter because it calls into question the transaction that we've just been talking about with the value added reseller.

**"Q.** How does it call into question?

**"A.** Well, I can't understand how you could sell something

that -- to a VAR with an end user where this looks like it's the same deal that the end user said no. It just feels very odd."

I think that's British for it feels very phony, it feels very fraudulent, I submit to you.

They recognize the revenue. They suggest the deal is an appropriate deal, and Mr. Hussain makes another complete falsification about the reasons for using Discover Tech as a reseller. He tells Deloitte that they are an 8(a). That's the service disabled veterans group, and Mr. Truitt specifically testified that Discover Tech was not an 8(a). MicroTech was an 8(a) but Discover Tech was not an 8(a). This is Mr. Hussain hiding the ball yet again from Deloitte.

They recognize the revenue and include it in the quarter. It helps them hit analyst expectations.

And then, again, you know what happens. Autonomy cancels the deal during the dark period and eventually writes off all of it before the deal actually closes with HP in or around late September. Another great example of cleaning up the books.

The balance sheet of fraud grows with this deal.

I think we come to the last of these VAR deals that I want to cover today. This is the Q2 2011 $7,000,000 MicroTech/HP deal. Again, same pattern, every time for all these.
Mr. Hussain is desperate for the revenue, needs 10 million from HP.

The only problem with HP at this point vis-a-vis a sale of Autonomy software to HP is that they're not interested. Mr. Egan made it crystal clear that they had a strategy where Mr. Hussain and Mr. Egan thought that maybe HP needed the software in order to solve an issue relating to the U.S. Postal Service; but when you -- when Mr. Egan testified about the status of the sale to the end user, he specifically said "it was not in good shape." Those were his words.

There was a theory that HP needed it, but they're not even out negotiating directly with HP on the software sale. They're just theorizing that maybe HP is going to need it. Nonetheless, they sell it as a reseller deal to MicroTech with HP as the end user.

When Mr. Egan testified about this, he acknowledged that Mr. Hussain and he thought there was a lot of risk around this (reading):

**"Q.** What, if anything, did Mr. Hussain have to say about the possibility of actually selling to Hewlett Packard in this reseller deal?

**"A.** He agreed it was risky."

Yeah, of course it's risky. They're just theorizing that HP had this need.

HP was not going to do the deal. So you know what happens. Mr. Hussain and Mr. Egan go to Discover Tech of course, but Discover Tech doesn't have enough money of course,

so Autonomy bought stuff from Discover Tech first of course. The same pattern again and again and again.

What's interesting about these bank records is that some of the $4.4 million that Autonomy is paying for stuff from Discover Tech are making their way over to MicroTech so that MicroTech can then pay down some of its debts.

First you have the purchase order recognizing the revenue. Then you have the wire showing how it's going from Discover Tech to MicroTech. They're moving all this money around. It's going in a big circle. It starts at Autonomy, goes to Discover Tech, goes to MicroTech, and then it goes back to Autonomy. All the bank records show the same thing, which this is a big circle.

Mr. Hussain in the Audit Committee report makes the following misleading statement. It's misleading because the money MicroTech paid actually came from Autonomy via Discover Technologies. So the suggestion that MicroTech was collectible and a good risk, again, is being twisted by Mr. Hussain because he's fully aware that the money is passing through the VARS -- from Autonomy through the VARS and then back to Autonomy again.

This brings us to the FISMA-compliant FedKloud proposal. This is the $8.2 million. Steve Truitt testified about how essentially that he could offer anything to Autonomy in his proposal. He said it wasn't a Pulitzer prize-winning proposal, but he didn't even have to really negotiate the price very

much, and all of a sudden Autonomy is paying him for this FISMA cloud proposal. We see that in or around August 2015. This is exactly when all the negotiations with HP are going on, and this is a perfect example of Autonomy and Mr. Hussain buying things he doesn't need in order for MicroTech to be able to pay off its debts.

There is an urgency around these deals that's reflected in the e-mails. Mr. Hussain is exhorting Mr. Scott to get the paperwork done right away. What Mr. Truitt will not know is that there's some intense negotiation going on between Autonomy and HP, but Mr. Hussain knows that and he knows that time's running out and he needs to get this done quickly, he needs to clean up his books quickly, and that's exactly what you see play out in the e-mails.

All right. On August 18th, HP announces the acquisition of Autonomy. That's a pretty important line of demarcation in this case, and both Mr. Truitt and Mr. Loomis remarked on the extent to which, once they learned about the announcement of the HP's acquisition of Autonomy, it suddenly made sense why Autonomy was cleaning up its books or eager to do these deals that didn't necessarily have business sense. Both of them made suggestions, Mr. Loomis specifically, that it felt like they were cleaning up their books.

That deal belongs on the balance sheet of fraud. It's another example of basically Autonomy buying its revenue.

In this quarter, again, there's the amount of the fraud and inflated revenue is in excess of 10 percent. When you pack in the hardware, it's around 20 percent.

That brings us to sort of where we are in the balance sheet of fraud. There are two additional deals that I want to talk quickly about, which are the Capax/FSA deal and the Capax/McAfee deal. Both of them belong on the balance sheet of fraud because Mr. Baiocco testified about both of them as being unusual, couldn't pay, had to work it out with Autonomy.

Autonomy was buying its staging tools and buying the NearPoint software for excessive amounts in ways that when you get to the bottom of it with Mr. Baiocco, at least as to McAfee, quote, "didn't smell right," and it didn't smell right because it wasn't right. They were cleaning up their books, packing it in right at the time of the acquisition.

**THE COURT:** Maybe we should take our recess now.

Ladies and gentlemen of the jury, we're going to be in recess. We're going to take a short recess so we can plow ahead, but a half an hour.

So remember the admonition given to you. We will resume at 1:30.

(Proceedings were heard out of the presence of the jury:)

**THE COURT:** Mr. Reeves, 163 minutes, Mr. Reeves.

Thank you. We're in recess.

That's what you've used.

**MR. REEVES:** Yes. Okay.

**THE COURT:** Thank you.

**MR. REEVES:** I think I have --

**THE COURT:** No.

**MR. REEVES:** Okay.

(Luncheon recess taken at 1:00 p.m.)

**Afternoon Session** **1:34 p.m.**

**THE CLERK:** Come to order. Court is now in session.

(Proceedings were heard in the presence of the jury:)

**THE COURT:** Let the record reflect all jurors are present, the parties are present.

You may proceed.

**MR. REEVES:** Thank you, Your Honor.

Balance Sheet of Fraud represented an awful lot of work, ladies and gentlemen, over a long period of time for fraud. This was a conspiracy and it involved people in addition to Mr. Hussain, including Mike Lynch, Peter Menell, Andy Kanter, Steve Chamberlain and Stouffer Egan, and you've heard an abundance of testimony and evidence about their respective roles.

At the end of the day, I submit to you that this Balance Sheet of Fraud shows the lack of economic substance associated with so much of Autonomy's business and revenues. When you add it up, just for these deals alone, Autonomy has paid over $200 million in order to obtain $190 million of revenue. That is

Autonomy buying its own revenue. That is the defendant buying Autonomy's revenue in order to meet revenue projections through fraud. That is a scheme to defraud.

Let's take a look at this in aggregate, step back and look at the big picture.

This is an accumulation of all the bar charts that we've been going through today, and I submit to you that -- let me step back. The gray is revenue that appears to be valid and we're not here to say otherwise.

The yellow is the amount of the hardware revenue that was recognized. It was the -- the existence of those sales were concealed from the market, from the analysts, in the way we've gone through today, and it was used to pad and inflate the overall revenue without disclosing exactly what it was for Autonomy.

And the red are adjustments, the full amount of the adjustments, that are reflected in the restatement and Mr. Yelland's testimony, portion of which are the deals that we've covered with you today.

Let's go to this chart. Do you remember this chart? This was Mr. Egan's chart about where problems began for Autonomy. He described the yellow line as the beginning, as the point in time when Mr. Hussain told him it would be okay to do a VAR deal where the end user had not agreed to the sale, which put the VAR at risk. It created this opening where the deal

wouldn't necessarily sell through or might not sell through, and it became the opening that Mr. Hussain, working with the others at Autonomy, crammed tons and tons of this fraudulent revenue.

That had the following effect. This is the second chart that Mr. Egan testified about. It has the effect of when you do that, grabbing future revenue, an Amgen or DOI or HP or any of the deals that we've gone through today, and pulling it from the future into the current quarter, selling it to the VAR -- that had two effects that Mr. Egan described.

One, it created a bigger hole for him in the sales process in the following quarter. You start at a lower place. He described it as starting in the basement rather than starting at the first floor because, just as you saw in Amgen, the sales force still has to sell last quarter's deal. They can't move on to this quarter's deal.

That's bad enough. But it also, by grabbing the future revenue improperly in this way, it elevates the growth arc in the expectation of what your next quarter's growth target is going to be. So it's a double whammy, essentially, and that's exactly how Mr. Egan described it.

And bottom line is conceptually, look at this. You cannot continue to do business this way, and that was precisely what Mr. Egan said. Is this type of phenomenon -- is it sustainable, I asked him. Answer, "no." You can't continue to

do business this way.

So now let's go back and look at those aggregated charts again in slightly different form. If you are to strip out the adjusted revenue and you strip out the hardware revenue and you just look at the revenue that was properly recognized by Autonomy, what do you see? What you see is that basically between the second quarter of 2009 and the first quarter of 2011, Autonomy was flatlining. It was not growing. It was like the other tech companies. It was -- that were suffering in the recession and the market downturn. It was exactly what the analysts, who you heard from, said would happen.

This whole fraud is about pretending that Autonomy was growing when it really wasn't growing, certainly not at the rate that they insisted.

Just as Mr. Egan described in 2008 and 2009, what you see in the evidence is that the defendant began to pull big deals from future quarters and sell them to VARs in the current quarter to meet his revenue projections, and while the VARs were required to pay, the defendant clearly knew that they probably would not pay unless and until the deal sold through to the end user or until Autonomy paid them. Okay? Collectibility for those deals was not assured, as the accountants like to say.

Quarter after quarter, Autonomy's financial statements were falsely inflated by 10, 15, 20, 25 percent. A

middle-of-the-pack tech company with a decent piece of search software was falsely made to appear to be a market defying growth story during the rescission. It was built on a lie, and that lie was built on bogus VAR deals and millions and millions of concealed low-margin hardware sales.

Early on, the defendant started small, but by late 2010 and early 2011, his scheme snowballed and it snowballed out of control. Each quarter the hole grew bigger and bigger. And at bottom, Autonomy was an unsustainable corporate Ponzi scheme.

Even by the end, Sushovan Hussain knew he could not keep his scheme going and that it required radical action, and you are going to see the email in which he says exactly that, and that's the point at which Autonomy begins to negotiate with HP.

Before I plunge into of the last chapter of the evidence here, let's talk quickly about the elements in this case. For a complex case, with the judge's assistance, the elements are not really that difficult, and you are going to have the jury instructions with you back in your deliberations.

The key elements of the offenses are scheme to defraud. The entirety of this argument so far has really been centered around the evidence of a scheme to defraud.

A scheme to defraud is really nothing more than a plan or scheme to obtain money by fraud using false and misleading statements, half-truths, and material omissions. The record is replete with Mr. Hussain's multiple lies in order to carry out

his scheme to defraud. And he did it with an intent to deceive. That's why people lie. That's why he lied.

Wire fraud is simply carrying out a scheme to defraud using interstate wires. You're about to see the wires, the emails, the phone calls that Mr. Hussain and his co-conspirators used in order to carry out their wire fraud scheme.

Securities fraud is simply a scheme to defraud involving and in connection with the purchase and sale of HP securities. And for the little piece of the puzzle related to securities fraud, there is no question that the same scheme to defraud was used to defraud HP shareholders.

A conspiracy, read the instruction carefully, really nothing more than an agreement between people like Dr. Lynch, like Peter Menell, like Andy Kanter, like the other co-conspirators in this case to commit these crimes.

Let's talk about the HP acquisition. But let's begin with Sushovan Hussain's mindset going in to the key months of 2011 when it really begins to take momentum.

I already emphasized to you Exhibit 1274. I've already shown it to you a couple of times so I don't have it here, but there's a key piece -- if you look at that email, this is an email from Mr. Hussain in December of 2010 to his boss, Mike Lynch, subject, "U.S. IDOL." This is what he says:

"Really don't know what to do, Mike. Revenue fell away

completely."

Moving on, he ends by saying, "So radical action is required. Really radical. We can't wait anymore."

What do you think he's talking about? He's talking about selling the company. That's exactly what happened.

In or around the spring of 2011, Sushovan Hussain came into Palo Alto, California, and touted Autonomy's performance to HP using financial statements he knew were false and misleading. He conspired with people like Mike Lynch to paint a false picture of Autonomy's growth story, and he used interstate wires in the United States to circulate his false and misleading financial statements and ultimately to obtain billions of dollars from HP.

Let's go through some of the ways they did that.

They retained an investment banker, well-known investment banker here in Silicon Valley, Frank Quattrone. Mr. Quattrone, in or around this January time period, is circulating information touting his client, Autonomy, about their success, about their financial success. You know what Mr. Quattrone would not have known, that that success is based on lies and deceit by the defendant.

This is the first of our wires. Count 2, there are going to be a series of wire fraud counts in our timeline here. This is one that relates to the BofA deal that we have already covered and in or around this December 2010 time period.

They're are circulating portions of the BofA deal to Joel Scott and others here in California from London. That is part of the scheme. That's one of the alleged wire fraud counts.

We already went through the falsity of this document, and, again, it's one of the only ones of the counts that don't relate directly to HP, but it's still a charged wire fraud count, and there is abundant evidence for you to see it. It's a wire in furtherance of Mr. Hussain's scheme.

Let's go back one second. On February 1st, they had the first of those so-called Halo meetings. That's the special video device that allowed the Autonomy team, including Mr. Hussain and Dr. Lynch and the HP team, including Mr. Johnson and Mr. Robison and other people to meet and talk about the possibility of HP acquiring Autonomy. The wire setting this up with the knowledge that Mr. Hussain had with his intention to sell the company based on false and misleading financial statements are appropriately charged as one of the wire frauds in this case.

There were stipulations about the use of interstate wires that we read into the record and of course into the trial. Fill in some of those details.

Count 4 is the actual Halo meeting. This is the first Halo meeting itself. The other was a sort of setup email for it, and this is the meeting in which they begin to tout the Autonomy story. The defendant and Dr. Lynch are suggesting

that Autonomy is really performing well, when based on the evidence in the record, it was not.

The next document is an example of one of the emails supporting the existence of the wires and the phone call in this time period.

There's a second and somewhat more meaningful or more in-depth Halo conference in or around early March, in which again Autonomy's financial is talked about at a high level, but the suggestion is one of growth and success, which is really built on a lie in the manner that we've gone through in some detail today.

There are additional emails that leave zero doubt that the meeting actually happened and used our wires, used the United States wires, in order to carry out the scheme to defraud.

Mr. Johnson came in here and testified that among the other topics that were covered in the second Halo meeting was the financial information at Autonomy and its performance over years. In that meeting, you could reasonably infer it's consistent with what Autonomy has said publicly about its performance, which is inconsistent with what the evidence actually shows in this case, which is that performance was built on a lie and a series of lies.

We go a little bit later on in the narrative. Mr. Apotheker testified about HP's interest in possibly

acquiring another software company, TIBCO. The simple fact is in March, 2011, Autonomy was coming in second, maybe even third with the other possible deals that they were thinking about doing, and HP, at that point, was much more interested in acquiring TIBCO, which I think from that you can reasonably infer that HP was not necessarily going to buy Autonomy no matter what.

Now, this is one of the press releases that we've gone through at some length in the course of the evidence so far. It's disseminated from London, but it's using the PR Newswire facility in the United States to distribute it in the United States, including into the Northern District of California, right here. This is another properly-charged wire fraud count.

During this time period, as you would expect, the corporate development team at HP led by -- on a day-to-day way by Mr. Sarin is reviewing all the information they can get their hands on about Autonomy, including all of the analyst reports that -- from some of the banks that were covering Autonomy and would be of the same caliber as the type of reports that you've heard from some of the analysts who have testified in this case. HP is certainly doing everything it can to acquire its best understanding of Autonomy starting in this early time period, and that has to be based at this point on the public record.

One of the most important things you heard that the HP people are doing is reading very carefully the financial statements prepared by Mr. Hussain and disseminated publicly, and that included the lengthy piece of testimony that Mr. Apotheker offered about the 2010 financial report.

Mr. Apotheker read this with great care. He testified specifically that he spent a lot of time reading it and read it carefully, as well he should. He's a very astute consumer of software companies' annual reports. He read this carefully, and he was impressed by the pure play software company. That was very important to him because of the margins.

If he had known anything about the fact that they were not -- they were selling somebody else's hardware that was not an appliance, he said in his judgment that would fundamentally change his consideration relating to Autonomy in the sense that it would have raised a lot of questions for him with regard to Autonomy's real growth potential and desirability as an acquisition for HP.

Count 8 is another dissemination of the same fraudulent press release that we've already gone through. This one happens to actually use the wires to go straight to HP because they are a receiver of the newswire services that distribute it. That's Count 8.

Count -- next in time, we have -- this is an example of Mr. Johnson working with his team, including Mr. Sarin, reading

through Autonomy's earnings transcripts, so attached to this email is the fact -- is the -- an example of the transcript, so all the statements that Mr. Hussain and Dr. Lynch are making in the analyst calls, those are devoured by the corporate development team at HP in order to get to the bottom of what Autonomy might be worth and whether they really want to acquire it. They're relying on all those types of documents, the financial statements, the earnings call transcripts, and the lies and deceptions that are contained in those documents are part of the scheme to defraud and are being distributed to HP and relied on by HP in order to make its judgment about whether to acquire Autonomy.

You know at this point that many of those statements were false and misleading and were very much a part of Mr. Hussain's scheme to make Autonomy appear to be something that it really wasn't, certainly growing as a company when it really wasn't.

Go to Count 9. This is a -- this takes us into the time period in which there are a series of meetings, regular meetings in the period where HP is actively doing due diligence, and this first email here, Count 9, is a wire between Mr. Sarin to Sushovan Hussain, setting up the first diligence call.

You heard testimony about this call, that Mr. Sarin described the extent to which there was a high-level description by Mr. Hussain of the Autonomy financial

performance. I submit to you that would be false and misleading because it would be consistent with and was consistent with the publicly-disclosed financial performance for Autonomy which you know, based on this record, was itself false and misleading.

That gets us into sort of the detailed calls with Mr. Sarin, Mr. Gersh, Mr. Hussain, and the other people that you've heard were participating in these -- the nitty-gritty really of the diligence calls.

On or around August 2nd in Count 9, you have a very detailed description of sales model by product. I do think that's an important thing for to you really look at. This is precisely what Mr. Sarin/Mr. Gersh was asking about. They're asking about "your sales model by product." Please focus on that word "product." That word is not the same as "revenue." Okay? There was a lot of testimony about Mr. Sarin's effort to identify the revenue that came from one hundred percent of Autonomy's products. That was the question that was asked.

Sushovan Hussain knew that Autonomy resold tons of hardware as a product. Okay? And yet Sushovan Hussain did not disclose that. Okay? Why -- why not? Why wouldn't he simply say, "Last year, we sold roughly 100 million in EMC and Dell hardware"? Why would he not do that?

Well, if he said that, he would essentially be undoing his years-long scheme to make Autonomy appear to be something that

it really wasn't. Okay. He's not going to do that. He perpetuated the myth that it was a pure software company in these calls, and it is the question that's asked, "tell us about your products," that creates the false answers that Mr. Hussain gave and others gave in that time period.

And I submit to you that both Mr. Gersh and Mr. Sarin worked earnestly to try to understand 100 percent of the revenue-generating products that Autonomy had. And that Mr. Hussain essentially deceived them, misled them about the truth of that.

Let's go to Count 11. This is the second one of the due diligence calls. In this call, you heard testimony about the extent to which there were -- was a discussion about writeoffs, and you have Mr. Sarin's handwriting about what was said in the course of that call.

Answer: "About the subject of bad-debt writeoffs, v small," very small. "One percent of receivables outstanding." That is his -- Mr. Sarin's notes of what Mr. Hussain said.

That was not true. That was not true. And that was a direct question put to Mr. Hussain and answered by him in this call. You know that it is not true because you've seen an avalanche of writeoffs and bad debt in this case.

Mr. Hussain is using these wires in this call to execute his scheme to defraud, misleading HP and Mr. Sarin and Mr. Gersh and the others representing HP.

There was -- if the first two calls weren't enough, there was an elaborate call on or around August 4th, I believe, in which Mr. Sarin carefully went through the projections that he had for revenue and all the products that generated revenue. Again, it was another detailed opportunity for Mr. Hussain to tell the truth, which he did not do.

You've seen abundant evidence of how much revenue came from hardware by Autonomy over these years, none of which is disclosed in this call. If he was acting in good faith, how could that not have happened would be a reasonable question for you to ask. It didn't happen. The words were not used. The hardware was not disclosed because Mr. Hussain did not want it to happen because it would undercut his whole effort to inflate Autonomy into something that it really wasn't.

Mr. Gersh asked in these calls -- asked an important question about marketing. And let's just pause for one moment on that.

Question to Mr. Gersh: "If I could draw your attention to question 19 on page 5, do you see where it says marketing strategy and activities undertaken, types of marketing spent, where and why spent, assessment of effectiveness? Do you see that?"

Answer: "Yes, I do."

Question: "Do you have a memory at any point of anyone from Autonomy telling you that Autonomy was reselling hardware

as part of some marketing strategy?"

"No, I do not."

Another direct question that Mr. Hussain was given an opportunity for him to tell what he had told others in different contexts that we've covered today about hardware was a loss leader and being used to market future software sales. Did not happen because it would have undercut this whole false narrative that Mr. Hussain and his co-conspirators were perpetuating.

Let's go to the Top 40 contracts and the Top 40 customer list.

A lot of things in this case are not that simple. Okay? We need to spend a little time looking at the evidence. I submit to you Top 40, that's pretty simple. That means the Top 40. That doesn't mean something else. That doesn't mean the Top 40 we get to select. That doesn't mean the Top 40 software contracts. It means the Top 40. And I think if you really center on what's being asked for, that's precisely what the evidence shows is being asked for. The Top 40 is not ambiguous. It means the Top 40.

And there was a reason why they wanted the Top 40 contracts and Top 40 customers, regardless of what they were. There were lots of important business reasons in terms of, you know, if there's a customer that is disproportionate, that creates risk. If there is a customer that HP can't do business

with, like a Dell, that creates other kinds of risks. There are reasons you've heard in the testimony why you would want the Top 40 exactly as the Top 40.

And Mr. Gersh explained that. We wanted to know what they were selling and how they were selling it because revenue recognition under GAAP is very complicated and you need to understand what is being sold and when it's being sold and how it's being priced to be able to get to -- to be able to get a clear view of what the revenue recognition implications could be.

"Okay. So were you trying to limit the products that you were asking about by this question?"

Answer: "No. No way."

They want the Top 40 contracts for their own business purposes. They want the Top 40 customers for those same reasons. That's what was asked for.

Let's take a look at what happened and what was given to them. First, let's start with this exhibit, which is -- within Autonomy in preparation for the response about the question about the Top 40 contracts, you see a circulation between Mr. Kanter and Mr. Chamberlain and Mr. Hussain, who are working on all this at this time. And in this version, we've highlighted the VAR deals in -- and that's what the highlighted deals are.

Now, as you already know, none of these VAR deals that are

highlighted here ever actually sold through to the end user. Didn't happen. That created some of the problems that we've talked about this morning.

Let's take a look at what happens next. All right. This is the version of the Top 40 contracts list that gets put into the data room and actually given to HP and relied on by Mr. Gersh. This is -- what you'll see here is two things: One, the hardware deals are missing in the manner that are set forth on the left. Zones and the other $4 million Zones contract, two big hardware deals, Top 40 deals, Top 40 contracts, should have been on the list, pulled out for no -- no reason consistent with good faith; a reason consistent with perpetuating the scheme to defraud that Mr. Hussain had worked so hard to carry out for years.

What also happens is there is the false suggestion that the VAR deals actually sold through to a European government or to the U.S. government. The European government I think is a reference to the Vatican deal. The number is exactly the same. Did the Vatican deal ever close through? Did the Vatican ever actually buy any Autonomy software? No. There is no evidence that that happened. And yet that is a false and misleading statement suggesting that it did.

Let's go to the Top 40 customers list. Similarly, within Autonomy, you see the circulation of a correct list. It has the VARs on it. They're all highlighted in here just so you

can see exactly where they are. So it's not like Autonomy and Mr. Hussain didn't have this information, had the wherewithal to provide it in some appropriate way consistent with the disclosure obligations. They had the correct information. But let's see what happens.

If we go to -- the list on the left is what was put into the data room. The highlighted deals, again, in the Top 40 customer list suggests that they're actually sales to the U.S. government, European government, pharmaceuticals. You know, those sales didn't really happen because they were done to VARs that never sold through to the end user.

And the hardware is stripped away. How do you know that? One of the reasons is the summary that Special Agent Bryant put in identifies who the top customers by dollars are based on the spreadsheet that Antonia Anderson prepared, and SHI, who you've heard a lot about, missing from this list. Okay? There was no reason to strip out SHI. Why wouldn't Mr. Hussain be proud of the fact that he has sold so much to SHI, which is essentially a provider to BofA. Why wouldn't he don't that? The answer is it would undercut his whole scheme to defraud based on the false story of growth and high margin that he had worked so long to cultivate.

Let's go to the next email. I think this is the -- one of the emails that shows that Autonomy is actually putting the Top 40 customer contracts and revenue listings into the data room.

Then we have -- if we go to the next email that we have during this time period, this is an interesting email. Mr. Kanter is complaining to the folks at HP about the amount of time and effort he and others at Autonomy have had to put into the due diligence. Twenty-eight group calls covering at least as many hours.

So now the defendant in this trial at points in the cross-examination has seemed to suggest that HP was asking too many questions -- I'm sorry -- asking too few questions. It didn't care enough about the diligence. Okay. I submit to you that is not supported by the record.

But what is interesting, you go back in time, you look at what Mr. Kanter is doing, who is it that is really complaining about the amount of time and effort going into this diligence? It's Autonomy. It's Mr. Kanter who is complaining.

HP was pushing hard and going deep, and it's Autonomy that's pushing back about the quantum, about the depth of the diligence.

I think I have a series of exhibits that I can scoot through kind of quickly because they are the whole writeoff that is happening at this time. I think the importance is there is a series of writeoffs, as you already know, happening at precisely this time. One of the things I'd like you to please consider is why would so much be swept under the rug at the very time when the deal is coming together? I think all of

you know the answer to that. It is to make this business look better than it really was. Okay.

If we could go to the next slide. We have in or around August 14th. According to the testimony of Mr. Apotheker, that's when the final actual price for the acquisition was set. It was set on August 14th. There had been a range before. They had the diligence. They set the price a couple of days before they announced the deal and not earlier than that.

This is the FileTek writeoffs. I think we can skip through that. A couple more points here. This is an important document relating to the securities fraud count. Sushovan Hussain in this exhibit, 2309, is attesting to HP, to the truthfulness of HP's press release. HP is announcing in its press release Autonomy's financial performance. And when Mr. Hussain attests that all the information about Autonomy that HP is getting and disseminating to its shareholders -- Mr. Hussain says it's all true when, in fact, he knew full well that Autonomy's financial statements were false and misleading. This is a false statement carried out as part of his scheme.

And that -- if we go to the announcement and talk a little bit about the HP shareholders in this case. You heard from two shareholders, Mr. Upton and Mr. Garner, both of whom told you in various ways how important Autonomy's growth story was, its financial strength and how much that was an important factor in their decision to buy HP shares. I submit to you that they

relied on a press release that Mr. Hussain caused to be issued that was, as to Autonomy's financial performance, false and misleading. And that as shareholders, they were entitled to accurate information.

Mr. Hussain, in the manner I've described, misled them, defrauded them, caused them to buy shares that they would -- that were relevant to their investment decision and may not have otherwise bought if they had had the truth.

By lying to HP about the alleged strength of Autonomy's financial statement, the defendant caused HP to issue a false and misleading press release and defrauded everyday investors, like Nigel Upton and Thomas Garner, into buying HP shares based on the fiction of Autonomy's alleged growth story.

HP the corporation, I submit to you, was not the only victim here. And shareholders, like these shareholders, were other victims of the scheme to defraud that the defendant carried out.

We have more of the writeoffs going on during the dark period. The dark period, the period of time between the announcement of the acquisition and the closing of the deal between August 18th, 2011 and October 3rd, 2011 is important. It's important because that's where all the writeoffs are happening, all the credit memos are happening, where all the bodies are being buried in order to cover up what has actually happened.

Let's go to this document. That's one of the writeoffs. Let's go one further.

Finally we get to the end of the deal, October 4th, 2011. This is the actual purchasing of the Autonomy shares by HP in the open market using this Capita Registrars as essentially a broker to facilitate the acquisition of all these outstanding shares.

On October 4th, the money actually changes hand and HP actually bought Autonomy shares from its shareholders and there was no going back.

A couple last points and then I'm going to wrap it up. Right in this time period is this concept of integration: What is Autonomy going to be within HP as a business unit? And I think importantly, Mr. Apotheker testified about his aspiration, his intention that Autonomy function autonomously within HP. Those were the words that he used. And the idea being that Autonomy would have a lot of independence and it would be a coordinated arms' length relationship, he said in his testimony, between HP back in California and Autonomy being managed by Mr. Hussain and Dr. Lynch in London. That independence, I think, is very important to what happened and why this happened the way it did.

Let's go to the next slide, please.

Let's talk a little bit about why Mr. Hussain would do this. Why did the defendant commit these crimes? Okay. The

why question is really not an element of any of the offenses, but understanding why something happened is important because it takes us closer to the truth. It takes us to the truth of the matter.

So there's no question that at Autonomy, there was extreme pressure on Sushovan Hussain and everybody else in the business to deliver Autonomy's quarterly revenue projections on a regular basis, and you see that time and time again in his anguished emails to his boss and co-conspirator, Mike Lynch, about hitting his targets.

At some point, probably sometime in late 2008, the record is not exactly clear when, Sushovan Hussain began to cut corners by recognizing VAR deals before there was actually a sale to the end user. Okay. Stouffer Egan said as much in his description of the problem and what happened when they started to grab future revenue and pull it into the current quarter. Once you cross that line, it is hard to stop.

Now, every one of you know in your everyday lives people who have lied. All of you know once you start lying, for some people, it's hard to stop. For the defendant, it was even worse. Cheating in one quarter only led to more cheating in the next. And you know what happened. It snowballed.

But the prospect of selling Autonomy to HP was a way out for Sushovan Hussain.

Mr. Hussain could clean up the books before HP took over.

He could function with Autonomy within a massive corporation and corporate world like HP, and he could certainly hide out for a while, and the evidence supports that's what basically happened.

Once the deal closed, there was no going back for HP. And once the deal closed, that meant one thing for Sushovan Hussain. A $16 million payday.

That brings us to the end of the case or the end of my argument.

Ladies and gentlemen, when you peel back the details and when you strip out the jargon, the evidence of the defendant's guilt in this case is clear and it is overwhelming.

All morning, I have not really mentioned or only touched on IFRS. That's because this case is really not about IFRS. Amazingly, even Mr. Hussain said Autonomy followed U.S. GAAP and SOP 97-2 when it served his purposes to do so.

But the alleged complexities of European accounting standards was another part of the defendant's shtick. Sushovan Hussain used the mysteriousness of IFRS as a screen, as a dodge to carry out his scheme like when he suggested to Dave Truitt that IFRS somehow made it okay to backdate Prisa. Nonsense. It was not okay to backdate under IFRS, U.S. GAAP, or any other accounting standard anywhere in the world where you're hiding what really happened and the defendant knew that.

After two months of testimony in this case, all of you are

now experts on the accounting issues that really matter in this case. You can't book revenue on sales if you cannot collect the money. You can't book revenue on sales if you have to pay for them yourself. You can't book revenue on deals that make no business sense. And you can't book revenue in the last quarter for deals you closed this quarter without properly disclosing it, which didn't happen here. You can't do that.

It is not more complicated than that, really. If you use your common sense and if you follow the money, the accounting in this case is a snap. The defendant falsified Autonomy's financial statements again and again and again. No doubt about it.

He acted with criminal intent because he lied again and again and again to the auditors, to the market analysts, to the HP executives. No doubt about it.

And in 2011, he came into the Northern District of California and he flaunted Autonomy's false growth story, their financial statements, and in doing so, he walked away with millions of dollars. No doubt about it.

In a few hours, this case will finally be yours. I want all of you to enjoy the great sense of release that must come when you finally get to begin your deliberations and can discuss the case as a group.

Work together. Give and share your views of the evidence freely and openly with your fellow jurors. Use your common

sense and use your life perspective, the life perspective that each of you brings to your jury service to form a collective judgment about what really happened in this case. If you do, we are confident you will return a verdict of guilty on all counts.

Thank you.

**THE COURT:** Ladies and gentlemen, do you want to stand up, stretch a bit, and then we'll start with the closing.

(Pause in proceedings.)

**MR. KEKER:** Ready?

**THE COURT:** Ready. Okay.

**CLOSING ARGUMENT**

**MR. KEKER:** I just wanted Mr. Hussain to keep standing up. What we have as a defendant in this case is a human being, not some construct that's been put together by prosecutors who see the world through dirty windows.

The attack that you've heard all morning for more than three hours on Mr. Hussain was an attack. It used hindsight improperly. It completely ignored the evidence that they didn't like. He was just talking about hardware. Remember, Mr. Hussain said to Andy Gersh, "You know, we sell hardware for the convenience of our customers." They ignore it and tell you that people are defrauded.

They ignore false testimony which has happened in front of you from Egan, from Scott, from Rizek, from Dave Truitt, from

Baiocco. I'm going to go over that in just a second.

They ignore -- I mean, he just said somehow in 2008, they went south because they began selling to VARs. You've seen over and over -- and I'm going to show you this again. It is completely revenue recognition on the sale to the VAR. The VAR is the customer. The reseller is the customer. That's what they did.

This is a company with 25,000 transactions during the period that we're talking about. If you look at the same charts that we got the 25,000 transactions from, you'll see 10,000 of them are through resellers.

It ignores -- they completely ignore the fact that the resellers came in here and told you -- Baiocco, Dave Truitt, Steve Truitt, Loomis, that they were on risk. They understood they were on risk. They had to pay the money. That meant that the revenue recognition was proper.

They ignore -- just gets up and just blithely tells you that selling things to your customer is wrong and that Mr. Yelland has disallowed all those -- all those sales.

Selling things to your customer, according to the evidence that's been presented in this case, is something that has to be analyzed at fair value. The transactions linked doesn't mean linked in some existential sense. Linked means that one depends on the other. So what you have to do is look and see if they each stand on their own two feet, if they make sense on

their own two feet.

And what they ignore is that that's exactly what Deloitte did over and over and over and over, and I'm going to show you a list of their audit reports, and there's -- I don't know if there's hundreds, but there is probably a hundred work papers where Deloitte -- you can go look at them and see what Deloitte considered when they were deciding whether or not these sales and purchases between FileTek and Autonomy or between MicroTech or DiscoverPoint -- Discover Tech and Autonomy, whether or not they were properly accounted for.

So -- and most important of what they ignored, they ignored completely why we're here. HP -- Hewlett-Packard bought Autonomy, you've heard, because Apotheker had this grand vision. Are they suggesting -- it wasn't the books and records. It was the IDOL software. Are they suggesting that Hewlett-Packard didn't understand what it was buying when it got the IDOL software? IDOL software was going to combined with Vertica, with its structured capabilities and other HP software, and they were going to make $46 billion out of this little company or $17 billion out this little company. That's what it's about.

They got rid of the visionary, fired him. The vision went away, and a year later, Hewlett-Packard, with its army of lawyers, consultants, and so on, began working on this case. They produced a restatement that I'll talk about some more, but

they produced a restatement that was designed to support their civil case and support this prosecution, and this machine went to work and has supported the Department of Justice in bringing this case against an English citizen who is the CFO of an English company who was applying English rules of accounting, who was audited thoroughly, according to the English rules, by an English accounting firm, and they have brought this almost incomprehensible accounting dispute between Hewlett-Packard and Autonomy into a U.S. courtroom where they're trying to make this English man, Sushovan Hussain, into a criminal, when committing a crime was the farthest thing from his mind when he was working and it was the farthest thing from the people around him. I'll show you some of that in a minute.

Everybody in this case gets a pass, everybody that you have heard about, all the immunized witness, everybody that they mentioned. There were days sometimes when we didn't even hear his name. There were lots of other people. Everybody gets a pass, but he's supposed to become a criminal.

And you know why he's here? Hewlett-Packard wants him convicted. It's going to help them in the civil case for money damages. This case belongs in a civil court in London where it already is.

And this, what you just went through for three hours, talking fast, flashing stuff across the screen, is assertion, not proof.

The evidence, I hope I'm not offending anybody by saying, has been boring, tedious. I'm tired. I'm sure you're tired. But now you have to deal with it and thank God for that. You've seen how invested Hewlett-Packard and the Government is in winning this case. You know what Mr. Hussain and his family have at stake, so it's very important to all of us. That's why a fair, neutral look at the evidence by people who don't have a stake in the outcome is so important.

He greatly appreciates, as do all of his lawyers, the attention that you've paid to it, the fact that you stayed awake, the fact that you've been so punctual, and the fact that you've been such a great jury.

He came from England with great faith in the American jury system. He doesn't have a lot of great faith in the prosecutorial system, but you, the jury, are the only ones that can protect him from a prosecution that is trying to crush him. That's what juries do. That's why juries have to be counted on to require the Government to prove their case beyond a reasonable doubt.

As Mr. Reeves was talking, there were so many -- I sort of rejected the way I was going to do it before. There were so many times where I wanted to say, "Wait a minute. Wait a minute."

For example, Capax EDD -- let me start where he started. Capax eDiscovery, if you'll remember, Egan came up with this

idea and look at what he says. "I simply recognized the opportunity to do this. We had been winning a lot of EDD deals. We had delays in our ability to satisfy contracts. In my mind, that registered as a rationale for effectively doing another transaction giving more volume and more rights to a partner like Capax that was going to, in the future, be a source of extra capacity in that sense."

So they sold them software. Later on they sold them hardware. Everybody knew it was going to take them a time to get up and running, but at the same time, everybody knew that they were doing eDiscovery work -- let me see the next slide, Jeff.

They were -- you've seen evidence they were doing eDiscovery for all of these people. They were having -- next slide -- having people trained in Boston. Joel Scott was talking about people going up to Boston, and the people that were saying that the work was getting done and that these bills ought to be paid included Mike Sullivan, Phil Smolek, who you heard about earlier. Mike Sullivan says, "We'll Egan told me that it was okay." But in any event, Andy Kanter -- I mean, all these people seemed to think that EDD work was being done, and it was being done.

Next slide.

And Mr. Egan lied about it. He said that he told Mr. Hussain -- you've heard that. That's supposed to be the

side agreement that he's hiding when he reports to Deloitte that there is no side agreement. He says he told Mr. Hussain, he told Mr. Scott. He told Mr. Sullivan that they weren't doing any work.

You know from the testimony that both Sullivan and Scott say that's nonsense. That's wrong.

And you know that Egan -- this is why I'm saying "wait a minute." The whole premise is that Mr. Hussain was hiding something from other people that he knew about. Well, Mr. Egan is sending misleading emails about Capax and about the need -- sending it to Phil Smolek and Pete Menell and Mike Sullivan. "We have a large volume of EDD processing at the moment. Be subbing quite a bit of it" and so on. You've seen a number of these emails.

Next.

"Phil, can you" -- this is Mr. Egan -- "process some more EDD work through Capax."

These -- I mean, are these people co-conspirators? This is Egan doing whatever Egan is doing, and I'm not still sure what Egan was doing because we know that Baiocco getting the money was also complaining that he was doing an awful lot of work he wasn't getting paid for.

Next slide.

And he -- and Egan was saying -- in this case, it's the British Petroleum.

"British Petroleum backlog has been causing me a lot of grief in the market."

Why is he writing these, quote, pretextual emails to London if London knows what he's up to? And I'm not sure what he was up to because Sullivan is saying performance issues have had a critical level -- Sullivan is the one who is signing off on this Capax EDD contracts.

So if you think the Government has proved something that is clear and certain in this -- well, I leave that to you.

Next.

Here is what Mr. Hussain is doing. He is trying from London, three thousand miles away from Boston, to make sure that somebody is monitoring this. He's -- he is repeatedly asking them this -- like they, I have put exhibit numbers on here -- we have put exhibit numbers, I didn't do it -- on here so that if you're taking notes and you want to go back and try to find, out of these 1300 exhibits that they have put in -- that we have put in in this case, if you want to find them, we've got exhibit numbers on them.

So Mr. Hussain is asking Kanter, he is asking Egan, he is asking the finance employees to check and make sure that the work is being done, the payments are appropriate.

Next.

And he's pushing back sometimes. They says, "Will you sign off on this," and he says "no, I have many questions."

And 6115 we just looked at. He's calling all the time. He's writing to Kanter and Menell re the EDD, "Stouff, please get Andy Kanter and Pete Menell's approval and then they can be processed."

Next.

And, remember, this is -- at some point somebody says to Joel Scott, "make sure that we've got good records on this." There is an email about that.

Here, this one, Philip Smolek and Joel Scott is then, having been asked -- is saying, "Phil, please confirm that you are tracking all expenses with Capax. Important that we have a closed loop process."

Next.

And Deloitte is all over it. They're sending confirmation notices, they're getting confirmation notices back that the money is owed and the money on the EDD licenses is owed. They determine that the accounting is satisfactory.

That's what -- I mean, they present that to you, the Capax EDD, which strikes me as very, very mysterious, lots of people signing off on things and Mr. Hussain being far away from it and accepting the word of people who are saying "yeah, they've done the work."

Remember, Mike Sullivan, there is one email that says "yes, the work has been completed."

So they're acting like that doesn't exist when they turn

and tell you that this side agreement that Egan says he has with Baiocco -- who, by the way, please remember, is an HP valued partner and on the preferred list and is a big pal of HP where he has made millions of dollars through this eDiscovery work.

But in any event, they act like it's perfectly obvious that Mr. Hussain is hiding some side agreement because Stouffer Egan tells you there is a side agreement. And we don't see the evidence the same way.

Let me take another example. Prisa. Can we see -- yeah. All right. Prisa is in 2011, and, remember, Dave Truitt testified that Prisa might have been part of the slate of deals that was discussed in the quarter. That was FINRA, ThinkTech, and he thought Prisa might have been.

You know Egan cared about -- Egan had sales targets. Egan had bonuses. This is at a time when Egan is fighting like mad to get a big bonus and eventually gets $460,000.

This is the one where Hyson sends a backdated purchase order to Egan's personal email address. Dave Truitt testified that Scott prepared the purchase order, but Scott says there was no backdating.

Discover Tech confirmed this debt to Deloitte.

Next.

And before we get to that, before we get to this meeting, so what happened was Egan arranged a backdated contract with --

for Prisa. He asked Truitt to do it. Truitt said he would do it. They figured out the backdating so that Egan -- so that Egan wouldn't put a timestamp on it, and all of that sort of worked, and the contract ends up being dated in the previous quarter.

Now, the issue is what does he know about it? I mean, this is Egan meeting his targets, caring about his bonus and so on. So Egan, who has testified five -- not testified, but talked five times to HP lawyers -- you know about that where he calls Mr. Hussain very ethical, and then he's talked at least five times to the prosecutors, all of a sudden he remembers that, "oh, Hussain told me to do it." This is one month after Truitt, Dave Truitt, tells the prosecutors that Egan asked him to backdate the Prisa contract. Okay. And you also know that their lawyers -- I'm talking too loud and putting people to sleep, I'm afraid. It's a tough time. Tough time in the day to be talking about this.

But in any event, back to Prisa. So Truitt tells the prosecutors that Egan asked him to backdate. Egan's lawyers and Truitt's lawyers are talking to each other. That's what Truitt said. They're going back and forth. Egan then all of a sudden after ten interviews remembers he was involved in backdating the Prisa deal and says Sushovan Hussain told him to do it. We say that's not proof of anything. You can't believe it.

And then what they say, Egan and Truitt say, "oh, well, we talked about it two weeks later on April 14th when there was a meeting." In fact, that meeting was a sales meeting. And look at Exhibit 1769. This is what Truitt, who's trying to sell his software to Mr. Hussain, writes after this meeting. You can't read this and believe that Dave Truitt came in and upbraided Mr. Hussain about something Mr. Hussain had done or whatever. This conversation just doesn't make a bit of sense when you read him -- his sales pitch here.

And what was Egan thinking on April 14?

Next one.

Egan is worried about his bonus, and he is pushing Mr. Hussain, whom he is counting on, to get his bonus in this Exhibit 6146. So look at those two things and say to yourself, just as people, are these emails that are written that day to Mr. Hussain consistent with this idea that Egan and Truitt went in and said "Oh, we don't like backdating. You shouldn't backdate" and all that business. Our position is it didn't happen, Mr. Hussain didn't even know about it.

I want to remind you about Stouffer Egan because he didn't play much of an part in what you've been hearing for three hours. He was the CEO of the Americas. He was operating fairly autonomously. When they talk about all these reseller deals, remember, he's the guy that's saying it's "99 percent done," "it's very close to closing," "you got to take it,"

"you're going to get paid" and all the resellers that are his friends and that he had the relationship with said they wouldn't have done these -- these deals if he didn't assure them that they were going to happen.

Joel Scott reported to him. Joel Scott did the paperwork for him, including the backdating paperwork. He, as I said, sold the deals, told them that they were on risk. He was clearly motivated by meeting his targets, by getting money, and so on.

After the acquisition, Mr.-- Dr. Lynch was fired eight months later in May. Mr. Hussain left HP around that time. Egan remained. When he was first interviewed by the Hewlett-Packard lawyers, he was still an employee, but he was on his way out the door. He said very nice things about Mr. Hussain, as you'll recall, and I'm going to show you some of those.

But then later, the Hewlett-Packard lawyers and the Government put tremendous pressure on him. It was "you or" -- well, put tremendous pressure on him. He began cooperating with the Government in order to help Hewlett-Packard. The threat of criminal proceedings was hanging over his head. It remained hanging over his head through the 21 interviews that he had. And that's why he did things like remember when he'd done something wrong, he remembered well a good way to deal with that was to say, "Well, Mr. Hussain told me to do it."

There is not an ounce of proof that Mr. Hussain was involved in any Prisa backdating, except Egan's testimony. And he is a thoroughly corrupted witness. By the end of the ordeal, he would say what they -- what he thought they wanted to hear.

Okay. Let's talk about what Mr. Reeves told you was the most corrupt deal, the one involving the Bank of America and Discover Tech.

What Egan said about this -- this is the one where there was -- $19.5 million Vatican transaction. The idea behind it was that it was going to close in the last quarter of 2010. When it didn't close, they broke it up, again because of the collectibility issue. Part of it went to Discover Tech. Part of it went to Capax. We contend completely legally.

The Capax piece was $9 million. The -- the Discover Tech piece was supposed to be $10.5 million. Mr. Egan testified that when they were doing this paperwork in late January, he was amending the contract, the same -- the same contract, the same software. The only thing that changed was the number of users. It went from 25,000 to unlimited.

Mr. Egan testified that Mr. Hussain thought the modification to the number of users was a valid amendment of the Q4/2010 deal. He testified that for amendments, backdating happens a lot in the sales industry. That's fine. He thought it was perfectly legal. Whether or not it was, Mr. Hussain thought the same thing that Mr. Egan did.

Let's talk about the 2.3. This is one of my favorites.

Slide 111, Jeff.

This MicroLink/Discover Tech transaction I think you'll remember because Dave Truitt -- we had some fun with Dave Truitt about it and other witnesses. This is the one where in connection with the MicroLink acquisition, Dave Truitt said, "Okay, I'll agree to a different price if I can take out my control point" -- excuse me -- "my DiscoverPoint software that I've been developing in MicroLink and put it into a new company called Discover Tech, and I'm going to start this new company, but I need IDOL software to work with DiscoverPoint so that I'll have something to sell." And so the agreement was "I'll buy $10 million worth of -- of software in order to start my new company."

Autonomy, because they were trying to follow the rules about collectibility, said, "Well, we can't sell it to you because you don't have any kind of track record, but we could sell it to MicroTech if you can get MicroTech to buy it and then resell it to you," and so they said, "Fine, we'll use MicroTech," and MicroTech agreed to the transaction for a price.

And what they got at the end was -- and you'll remember some of the emails -- Joel Scott saying, "This is the best I can do." They got -- they didn't get full-blown IDOL. He didn't get his profiling software, and he was mad. And he

really needed his profiling software because it was very, very important to him -- to the future of the company.

So he -- he came up basically with a scheme. He talked to Egan. Egan tells Mr. Hussain that there is another deal. He's talking to him. 490 shows he was talking to him, the phone records. So there was a lot of back and forth and eventually it led to Cronin backdating some paperwork and coming up with this -- all of this paperwork for the purchase of the $2.3 million.

Truitt says he has no idea about it, he doesn't know where it came from, he's not involved. What is this? And then we showed him the purchase order that came from his own files and we showed him that the profiling was delivered to Discover Tech and by -- by MicroLink. MicroLink buys it from Autonomy, sells it to Discover Tech. This is right before the merger.

And then Rizek gets into the action. He confirms that debt. He says -- he tells Autonomy that the deal will close after the acquisition happens. He sort of hides behind this firewall between the two companies. Then he says that, "Oh, the deal with Discover Tech is not going to close," and so they write it off, but in the meantime, they have sold -- MicroLink has sold the $2.3 million of software that is bought from Autonomy to Discover Tech for $1,000 per instance. So basically they ripped off Autonomy.

They then created a phony trail about it for their own

auditors, the "build versus buy" memo which is there at 5575. Cronin comes up with a phony agreement about it and Dave Truitt lies to his accountants about it. Again, Sushovan Hussain had nothing to do with that except be informed by Egan and Rizek that there was another deal for 2.3 that had been done in the quarter.

The next one I want to talk about to juxtapose from what you just heard is Vatican. The Vatican, the claim was it was backdated. Steve Truitt testified otherwise. He said he understood -- this is the one, remember -- Dave Truitt came in and said, "I'm lying on the beach in West Palm Beach. It's after the quarter ended. It's April 1st. I get a call and it's Egan who says, 'we want you to take a deal for the Vatican,' and I then call my brother Steve and he went back to Tony Jimenez, who runs MicroTech, and back and forth and this is the first time that anybody heard about us taking the Vatican deal." Wrong. And even Egan doesn't say that happened.

Brother Steve says he had heard about the Vatican deal. Cronin had been working on it for quite a while. They were working on it the end of the quarter. He was very excited because it would be a chance for MicroTech to do services -- that's another thing they left out. All of these resellers were hoping for services contracts and a way to grow their company by getting a connection with the people that they hoped

would be the end user. That was one of the motivations. So he was very excited about potential services that would go on, and he expressed a willingness to do the deal to Cronin.

They reached an agreement in principle. Cronin had the power to bind MicroTech, and Steve Truitt thought that the agreement had been made timely in the quarter.

Next slide.

And I already said -- I mean, nobody agrees with Dave Truitt's story about backdating. The only thing that is true is that the paperwork was signed the next day, but, again, this is not -- this is happening in the United States. This is not Mr. Hussain's -- within his knowledge. These are things going on between Egan and the people that he is working with.

Egan in this case testified that he had no recollection of speaking to Dave Truitt after the end of the quarter. He denied any backdating here.

So, I mean, those are just some examples of what I thought when I was listening and wanted to say wait a minute, there's a lot more to the story than this simple flashing of slides across the screen and argument by assertion.

This case is sort of a monster. It's impossible to sum up. There are 1300 exhibits, I've already told you. There have been 37 witnesses, each of them or most of them with various motivations to help Hewlett-Packard or themselves.

We could have had a trial on every one of these

transactions. That way maybe I'd understand them and it would be a lot easier for you to understand them. We've just been throwing transactions past you.

The Government has chosen to do that without kind of admitting and dealing with the fact that these are transactions that Deloitte, the auditors in England, studied and spent time on. They constantly used the word "oh, this is misleading" or they didn't tell Deloitte something.

Well, there are work papers that are in the case that show exactly what Deloitte knew about the transaction, how they evaluated it. One example will be you'll see the FileTek transactions. They knew that FileTek was selling and buying in near-time and they evaluated them, both sides of the transaction, for fair value and decided it was properly accounted for. Mr. Hussain relied on that.

Instead, the Government has chosen to rely on a man named Yelland who the HP machine fed -- after the announcement of the "oh, we've been defrauded" a year later, they fed transactions to him, and Mr. Yelland, what a surprise, came up with a different conclusion from Deloitte. He said "these should have been accounted for a different way" or "I don't like the" -- "I don't like the accounting, so therefore I'm going to take them out," and that's what they've been using to put these big numbers up in front of you. They've been using Hewlett-Packard's Yelland who has been working with

Hewlett-Packard's lawyers and accountants and people that are doing their civil case to come up with those numbers.

And with all of this conflicting -- a combination of conflicting evidence and dueling accountants, you can't possibly decide which accountant is right and you can't decide based on, quote, common sense -- "common sense" is a term that -- I mean, I love common sense. Everybody loves common sense, but common sense is also a trap. When somebody starts talking about common sense, they are often trying to cover up a hole in the evidence. It's like saying clearly "of course" and just acting like there is nothing to talk to about, and I told you don't fall for that.

Deloitte was trying to get the accounting right at the time it was being done and Yelland and the people working with him was trying to prove it wrong for the HP machine's own purposes.

I know you are sick --

**THE COURT:** Well, shall we take a recess now for 10 minutes?

**MR. KEKER:** Sure.

**THE COURT:** Ladies and gentlemen, we are going to recess for 10 minutes. Remember the admonition: Don't discuss the case, allow anyone to discuss it with you, form or express any opinion. Go ahead.

(Proceedings were heard out of presence of the jury:)

**THE COURT:** The jury has --

**MR. FRENTZEN:** May I just ask one quick question, Your Honor? I've never seen these --

**THE COURT:** What?

**MR. FRENTZEN:** Exhibits turned into something else that are not the exhibits.

**THE COURT:** I don't know what that means.

**MR. FRENTZEN:** So the things that we've been seeing on the screen, like emails and stuff, are not the emails. They're put in a different form.

I just want to know if there are redactions in the email, is that noted in the email? I'm trying to keep up with what it actually says and what is being shown and represented to be that exhibit. But if there is holes in them, I think we ought to know that.

**THE COURT:** Well, Mr. President, do your best.

Well, I -- look, look, this is argument. I don't know --

**MR. FRENTZEN:** Okay.

**THE COURT:** I think a lawyer -- I mean, I don't think he is showing -- I don't know. Is he showing something that is not in evidence? I don't know.

No. Okay.

So any way he wants to slice and dice it is a matter of advocacy. That's just the way it is. And we're all very -- you know, you'll be able to handle it because if you have one

example or two examples -- or one is enough -- you can make it in your closing, your rebuttal.

**MR. FRENTZEN:** I'll deal with it in my own way.

**MR. KEKER:** Your Honor, Mr. Reeves went quite a while, more than three hours, I think, and that leaves me in something of a bind --

**THE COURT:** What would you like to do?

**MR. KEKER:** What I would like to do is stop at 4:00 and pick up and finish my time tomorrow since the Government will have much less than an hour and a half to go.

**THE COURT:** Here is the thing. I mean, I think you are at a disadvantage talking to them after five hours --

**MR. KEKER:** Three of them are having trouble staying awake.

**THE COURT:** That may have been true during the trial as well. Not that it's not fascinating, but let's try to figure out a fair way to do it. I don't want you to have to talk your way into exhaustion. This is an important part of the case, a very important part of the case.

I don't know where you are in your argument. Give me an idea.

**MR. KEKER:** I'm just at the beginning. I've talked about a half an hour. By the end of today, I will have talked an hour and a half. And so what I would request is at least two hours tomorrow, not an hour and a half.

**THE COURT:** I'll give you two hours tomorrow and I'm going to give the Government 45 minutes tomorrow because I think we're in a different balance.

Can you do it in 45 minutes? Actually, you are only entitled to 22 minutes on my calculation, but I'll give you 45 minutes. I want it to be fair on both sides.

And, by the way, nobody is being unfair. I don't want to -- by saying "fair," it's not to correct an unfairness. It's just correcting -- there is a tremendous amount of material for the Government to cover in their opening. And especially, in fairness to the Government, your argument was before the argument "look, if they don't mention it, I don't want to greet it for the first time," so I think that the Government, out of abundance of caution, wanted to put in as much as they could. Great. Okay.

So I'll give you two hours, I'll give you 45 minutes, if you can do it in 45 minutes.

**MR. FRENTZEN:** I will take whatever the Court can give me and I can do something in the amount of time you give me.

**THE COURT:** You know, after some point people stop listening. I think 45 minutes is an effective rebuttal.

Mr. Keker, you quit whenever you want today.

**MR. KEKER:** 4:00, Your Honor.

**THE COURT:** Well, it's up to you. I leave it up to you. You're making an argument, so I don't want you to look at

the clock and say, "It's 4:00. I'll finish the sentence tomorrow morning."

**MR. KEKER:** Sure.

**THE COURT:** Just do it. I'm going to give you two hours, no matter what you use today.

**MR. KEKER:** Good. Thank you.

**THE COURT:** Okay. All right.

(Recess taken at 2:58 p.m.)

(Proceedings resumed at 3:11 p.m.)

(Proceedings were heard in the presence of the jury:)

**THE COURT:** Please be seated.

**MR. KEKER:** May I proceed, Your Honor?

**THE COURT:** Yes, please do.

Let the record reflect all parties are present.

**MR. KEKER:** Going down the stretch. I'm going to stop around 4:00 o'clock.

One thing you know from this evidence, and that is there's a huge amount of evidence -- e-mails, conversations between people -- about Mr. Hussain trying very hard to follow the IFRS revenue recognition standards that Autonomy was bound by. He was the one who had Deloitte come into the office and spend the first week or 10 days at the end of the quarter going over the transactions, any transaction of substance.

He was the one who caused his finance team to work closely with the Deloitte auditors -- it wasn't just him; it was the

whole finance team -- and received their blessing for the financial statements and the revenue recognition.

He was the one that the independent Audit Committee of the Board of Directors had access -- made sure that they had access to Deloitte as well as management so that they could make the accounting right.

The Government has spent a lot of time talking about Mr. Hussain caring about sales targets, analyst expectations and so on. That's what a chief financial officer is supposed to do and has to do. That's why he was the London Stock Exchange FTSE CFO of the year in 2010.

Even Mr. Egan, who was trying to throw Sushovan under the bus to save his own skin, got it right in his testimony. You'll recall (reading):

"**Q.** Okay. You said yesterday several times that Mr. Hussain -- you thought of him as ethical?
"**A.** Correct.
"**Q.** And you've said you thought of him as highly ethical?
"**A.** Correct.
"**Q.** What did you mean by that?
"**A.** It sure looked like it to me, yes."

I think maybe Mr. Egan had some psychological thing going on where he felt bad about what he was doing, and -- anyway. (reading)

"**Q.** Did he make sure at Autonomy that the revenue

recognition was done right?

**"A.** I thought so, yes."

Next. (reading)

**"Q.** Okay. And one of the things that he insisted on was that the reseller understand that they were on risk, there was no return, no cancellation, no side agreements; right?

**"A.** That's correct.

**"Q.** It was a firing offense to not follow that rule; right?

**"A.** That's correct.

**"Q.** And another thing he insisted on was analyzing the collectibility, which you told us is the probability that the reseller is going to be able to pay you; and he was a stickler on that, wasn't he?

**"A.** He was.

**"Q.** All right. And sometimes he'd have Mr. Chamberlain or Mr. Chamberlain would on his own ask for information to assure the collectibility part of the equation for revenue recognition?

**"A.** That is correct.

**"Q.** All right. And sometimes a reseller deal would have to be downsized because it would -- if it were bigger, the collectibility issue would raise its ugly head?

**"A.** Absolutely."

Next one. (reading)

**"Q.** Mr. Hussain emphasized the payment terms had to be fixed and the contract had to be signed before the end of the quarter?

**"A.** Correct.

**"Q.** He was -- those were the rules. He wanted everybody to play by them; right?

**"A.** Correct."

And then finally (reading):

**"Q.** Did he say that what you needed to do was to show fair value for what you're selling or buying?

**"A.** He made that very clear."

And he was backed up by this by dozens of other people in the Finance Department, at Deloitte, on the Audit Committee.

It's interesting and revealing that in a case where the Government prosecutors have gone all over the world to interview people, they've collected millions of documents, they've gotten all this assistance from Hewlett Packard, there's thousands and thousands of e-mails, there's not one e-mail that shows Mr. Hussain saying, "I want to do" -- I mean, or saying that, "Let's do something illegal," or that "I intend to violate the law." There are plenty showing otherwise.

Most of the e-mail traffic shows scrupulous attention to the revenue recognition criteria, making sure that the risks and rewards pass with a final deal before the end of the quarter, making sure the collectibility was probable. That's

all it is. It doesn't have to be certain. Probable at the time of the sale. Making sure that delivery has occurred.

Not only did he think he was following the IFRS rules of revenue recognition, everybody around him did too. Deloitte studied the accounting every single quarter. They signed off satisfactory. Virtually every witness told you that they thought what they were doing wasn't illegal or a crime.

Can we see Slide 6?

No. Slide 6. 6 through 11, Jeff. There you go.

Mike Sullivan on the hardware sales says (reading):

"**Q.** Is there anything wrong with it?"

He says (reading):

"I don't know why you would do it any other way."

Next.

Mr. Baiocco (reading):

"**Q.** You've said back there when you were doing these things, doing these deals, you didn't think you were doing anything wrong back then. Is that true?

"**A.** Uh-huh," says Mr. Baiocco.

Steve Truitt (reading):

"**Q.** When you were doing this, did you think you were doing something wrong?

"**A.** No.

"**Q.** Did you think you were committing a crime?

"**A.** I did not."

Steve Truitt is the MicroTech guy who did all those reseller deals for MicroTech.

Scott, who's the general counsel and later the COO and did most of the paperwork (reading):

**"Q.** You didn't want to do anything illegal?

**"A.** Correct.

**"Q.** And you made sure that you didn't do anything illegal after that?

**"A.** I did the best I could consistently from the day I was at Autonomy till the day I left."

And I don't know how -- oh, Egan. Excuse me. Egan (reading):

**"Q.** Did you think that you were committing a crime in working with resellers or selling as you were doing?

**"A.** I didn't think of it that way, no."

Egan, you'll recall, said that the only thing that he thought he did that was a crime was Prisa and that Prisa crime is what led him into implicating Mr. Hussain as we've discussed. (reading)

**"Q.** You thought that the sales through resellers were perfectly legal?

**"A.** I did think that.

**"Q.** And you thought that hardware sales were perfectly legal?

**"A.** I did think that.

**"Q.** You thought that the goal of getting more revenue in a quarter was completely proper and common?

**"A.** To have the goal, of course, yeah.

**"Q.** You thought that the -- this idea of selling to people who were also your customers was perfectly legal?

**"A.** I did.

**"Q.** Did you think there was anything wrong with giving Capax a retainer to get their platform up and running?

**"A.** At the time I did not."

Remember, what they did with Capax is they gave them some money. Later on they helped them buy hardware, and the expectation was that they would be there for overcapacity as things like the British Petroleum case came along.

They were paying them for work that everybody except Egan thought was happening. It was -- there was eDiscovery work going on like mad, they were a major partner, and eventually Capax got rich in the Hewlett Packard days doing eDiscovery work.

Okay. The IFRS, I don't think we need to go through this. So the annual report says they followed IFRS.

The earnings releases -- we don't need to put them up, Jeff.

The annual report that Mr. Apotheker says he reviewed, the website, let's put up Slide 15.

This is what they're telling people on their website is

the criteria. That's IFRS criteria: Persuasive evidence of an arrangement, delivery has occurred, the vendor's fee is fixed, collectibility is probable. Nothing to do with the end user.

Their contracts make absolutely plain "We don't -- if you don't sell through to an end user, you're still on the hook." That's what all the resellers testified.

You've heard allusions to this SOP 97-2, which is in evidence. Under that standard, the revenue recognition criteria are the same as IFRS. Let's look at that.

On the left is IFRS and it's got the five items that I showed you in the opening statement. And under this portion of GAAP -- there's more to GAAP than this -- but SOP 97-2 has the four items: Persuasive evidence, delivery, vendor's fee is fixed, and collectibility is probable as the proper way to recognize revenue on a sale to, among other things, a reseller.

And these are the criteria that Autonomy, Mr. Scott in particular -- let's look at the next one -- taught the staff. And he says, "Historically" -- remember, this was part of the sales presentation -- not sales presentation but training material to the salespeople -- "U.S. GAAP, now IFRS, is what governs us."

The four elements are the ones that you've seen 15 times already.

And what do you need to establish it for purposes of making this right? You need a contract, proof of delivery,

proof we'll get paid, PO -- purchase order is generally not required so if one comes in later, that's okay. An oral agreement is all right as long as it is a fixed deal. Ms. Anderson testified to that. Others testified to that.

And indirect agreement would be the VAR agreement, the VAR PO, proof we'll get paid.

Evidence of sell-through to an end user is not required. No revenue recognition. No commission. That's what they taught.

And the revenue recognition is determined at the time of the sale. That's what the problem with this hindsight is. They're going way into the future and then coming back and saying, "Oh, you shouldn't have recognized that sale to a reseller because of something that happened six months, eight months, ten months later because you entered into a deal with the reseller and you bought something from them," which I would argue you needed and that the accounting shows that you needed, "and then they used some of that money to pay back for a deal that they had done before."

That's not the way you're supposed to look at it in accounting. You're supposed to look at it at the time the deal is made in the quarter can you recognize revenue in the quarter.

Mr. Welham made that plain. The relevant agreement for revenue recognition purposes is the agreement with the

reseller. As long as the five criteria of IAS 18 are met, the revenue can be recognized at the time. As long as the criteria are met, there's no reason to consider the commercial rationale or substance of any onward sale by the reseller.

So if somebody says, "Yes, I own it, I will pay for it, I'm stuck with it no matter what happens," you can recognize the sale. You don't have to worry about what happens eventually with the reseller.

And he says it's okay if the purpose for the sale to the reseller is to get revenue in that period, which Deloitte knew perfectly well was happening. You've seen evidence that it was happening. They wanted to get a sale in the quarter. They did it through a -- to a reseller.

It is sell-in, not sell-through.

Next slide.

And Matt Stephan testified that (reading):

**"Q.** Under IFRS rules, Autonomy can recognize revenue based on the sale to a reseller without a requirement that there is a sale on to the end user?

**"A.** Correct."

And then U.S. GAAP, not SOP 97-2 but another part, has a different rule where if you're operating in the U.S. -- and this is what got confused when Hewlett Packard bought them -- there you have to have a sale to the end user under U.S. GAAP to be able to recognize the revenue.

There can't be a dispute that the rules were followed in connection with almost all of these sales to resellers. I'm not talking about the backdated ones, which I just mentioned, but virtually all of them.

The resellers at Capax, MicroTech, MicroLink, FileTek all testified that they understood they were on risk. Let's look at that.

Mr. Baiocco said he understood that he was on the hook for the deal, as Mr. Baiocco put it. He's Mr. Eyes of the Law if you'll remember. When you ask him a question, he goes, "Well, in the eyes of the law." But he was on the hook for the deal in the eyes of the law.

Mr. Loomis, he understood that in this FileTek/VA reseller arrangement, FileTek was -- the full risk was with FileTek. If it didn't close with the VA, which it didn't, FileTek still owed the money and had to figure out a way to pay back Autonomy, which they did.

Next.

Steve Truitt of MicroTech, the reason that they were concerned, he got upset because these deals weren't closing and they didn't work out very well for him, his brother had done very well at MicroLink with reseller deals. He wasn't doing so well at MicroTech. And the reason he was concerned and felt agitated was that he knew he was on the hook for the money. MicroTech owed the money.

And then finally Dave Truitt at Discover Tech understood that when he did these reseller transactions, when he bought software from Autonomy, he was at risk; and it means if the deal doesn't happen, we still have to pay for the software that we've agreed to purchase.

And they all testified that they could pay. This is the probability, collectibility piece.

Truitt, Steve Truitt of MicroTech, they had a $10 million line of credit. It might have been higher later. (reading)

**"Q.** Okay. But at least a 10 million line of credit with the bank to pay debts if you need to?

**"A.** Yes. At some point in time it was 10 million."

Dave Truitt who had gotten $55 million from the sale of MicroLink to Autonomy, he had plenty of money to fund his business and did. When he needed to put up down payments, he and his fellow owner Wharton would put their open money into the business. He could fund Discover Tech and pay its debts to the extent that was necessary.

Next.

Baiocco thought that he had a bunch of partners, remember, up in Buffalo, and he had a line of credit. He said it would have been painful to pay but he could pay for it.

And then Joel Scott, we asked (reading):

**"Q.** Did any of the resellers express to you that they couldn't afford to pay some of the balances that they had

on their account?"

And he didn't remember anybody specifically saying that. So the resellers all testified that they were at risk and they all testified that they could pay.

And you've seen a lot of e-mail establish about delivery, checking delivery. It shows great attention by Mr. Chamberlain and his finance team working with him about collectibility: Can you send us some financial statements? Can you send us information about your company?

For example, and I've mentioned this already, when Discover Tech was spun out from MicroLink, it needed that $10 million but Autonomy wasn't about to sell Discover Tech a brand new company $10 million worth of software because Discover Tech didn't have a track record of being able to pay or anything else.

So the deal was done through MicroTech. MicroTech and Discover Tech made a deal so that MicroTech got money for it, but MicroTech met the collectibility requirement and Discover Tech didn't.

The PMI/Citi transactions with Discover Tech, which you've heard about, required large down payments of 1 million each. The reason for these large down payments is to establish collectibility, "Look, so and so has put down a million dollars in advance and here's their credit history and they can pay." All of that scrupulous attention was paid to establishing that

they could pay and collect.

The Kraft transaction, which you've heard about, Autonomy required a $400,000 down payment.

And then, as I said, the sales were followed every quarter, careful scrutiny by the auditors. Their team was huge. The Government has chosen to bring in some junior members of the team, but let's look at the size of the team.

You saw this before. It's Exhibit 6425. There were senior partners, there were specialists, there were people who -- technical people who got demonstrations made to them. It's a big team, and the Government for whatever their reason, has chosen to bring in a couple of junior members.

Deloitte audited each sale that was over $1 million. It sampled the others. I've mentioned already that this is a company with 25,000 transactions during this period, 10,000 of them through resellers. Deloitte was all over it. Anything over 1 million, they looked at closely. Anything under 1 million, they sampled.

If you have questions about Deloitte's scrutiny or whether or not they had a thorough understanding of these transactions, particularly the ones where the Government says, "Oh, we didn't -- they didn't understand -- they're reciprocal transactions or *quid pro quo*," Deloitte understood that both sides of those transactions were going on at the same time and they analyzed them separately for fair value.

And the way you find that is looking at the Audit Committee reports, Slide 184, which this is just a list of them.

And then the audit work papers are like 100 of them; and I'm sure if you decide you want to look at the audit work papers and you ask the judge if there's some way that they can be organized better for you, that we can probably -- he would probably let you do that, but we'll see.

Now, you've heard from some witnesses, they've been cited, who didn't like these reseller deals -- Antonia Anderson, Matt Stephan, according to him, Joel Scott -- but not one of them said that they thought they were illegal or that the accounting was improper. And, in fact, they did them. Remember, Joel Scott did 15 reseller deals after saying how uncomfortable he was because of Mr. Hogenson's allegations.

And let me talk a second about Mr. Hogenson. Mr. Hogenson was a whistleblower. He wrote to Dr. Lynch and said, "Hey, what about Capax? What about sales of hardware? What about whatever he said?" You've got the exhibit and you can read it. And Deloitte ended up analyzing it and writing a response to it, which you can also read, and they concluded that this guy doesn't know what he's talking about.

Now, the fact that he ended up getting fired because his payroll fraud in his office and lots of problems in his office we think is separate; but whether or not it's separate, it

doesn't answer the question of whether or not what Mr. Hogenson was complaining about and sending letters to regulators about was right or wrong.

The answer to that question is in the files. You can find the response to Mr. Hogenson. You can find his complaint. You can find the response to it, and you can decide for yourself if he had found anything that had merit.

And then remember that the Deloitte folks when they were talking to Hewlett Packard due diligence people right before the acquisition told them about Mr. Hogenson, told them that Mr. Hogenson had made this complaint, that there was a report; and nobody, not Deloitte, not Hewlett Packard, KPMG auditors, seemed to be concerned about it.

It was disclosed to HP and if HP was concerned about it, they could have done something. Nobody seemed to think that his complaint about recognizing revenues in reseller transactions was correct.

From Mr. Hussain's vantage point, he's over in England, he's receiving signed contracts, he's receiving proof of delivery -- to the extent he looks at it, but his department is -- his team is analyzing collectibility, and he also knows that all this information is put together in a packet and given to Deloitte and the Deloitte auditors who were sitting in his office say, "This is proper revenue recognition."

Again, from his point of view, he doesn't read them I

suppose, but he knows that all of the people who are on risk are signing confirmation letters and saying, "There's no exceptions. There's no side letters. Everything's fine."

So what are they saying Mr. Hussain did wrong? They're basically asserting that the resellers, as I understand it -- and this is Mr. Yelland too -- weren't really on risk, which is -- and they're also saying there's something wrong with continuing to negotiate with the end user after the sale to a reseller. But there isn't anything wrong with that, and Deloitte knew about it.

Can we see Slide 168?

Here's the Vatican. This is a Deloitte work paper, Exhibit 1290, where somebody's written in (reading):

"MicroTech - medieval library deal. Still ongoing. Something meeting with MRL" -- that's Mike Lynch's initials -- SH and V." I don't know who V is. "Nothing signed that we something MicroTech gets paid."

In short, this is a recognition that -- and Ms. Anderson testified the same way -- that Deloitte fully understood that there was further transaction with the potential end user who in this case both MicroTech and Autonomy had an interest in seeing close the deal, the Vatican deal, which was going to go on for years and be worth a really lot of money. It didn't bother Deloitte.

Can we see the next one here?

Same thing with Kraft and Capax. This is Deloitte work paper 6371. There were meetings pre-Kraft and Autonomy dating back to July. The two parties continued to negotiate in good faith. The deal is progressing. We have seen evidence that directly links Autonomy and Kraft, both pre and post the deal with Capax, and they stamp it satisfactory. This is not something that in their mind vitiates the deal or makes it improper or anything else.

And it is completely logical from a business point of view that if you have a big customer, be it a bank or the Vatican or something else, and you've been working with that customer and you sell a piece of the software that that customer might want to a reseller, you're still interested in having the end user do the deal and you're still interested in working with the end user to make it work.

And that's what Stouffer Egan was complaining about it because it was more work for him. He didn't want to have to deal with the end user. He wished that they would just cut out this stuff, but that doesn't make it illegal or improper.

And then there's the issue that has been raised a million times about the deals going direct. Again, Deloitte understood that some of these sales with the reseller ended up being converted into a direct deal between the potential end user and Autonomy.

And let's look at -- yeah, for example, Kraft again

(reading):

"A deal is done through Capax in Q3 with end user Kraft, which was then subsequently reversed in Q4 and done directly with Kraft instead."

What that says is revenue was recognized in Q3 because of the sale to Capax, the end user, the customer; and then in Q4, fourth quarter, Autonomy and Kraft made a direct deal. But the point is -- and you'll look through the work papers and see this -- they didn't recognize revenue in the fourth quarter. They've already recognized the revenue in the third quarter so they didn't recognize the revenue twice, and that's something that Deloitte checked to make sure didn't happen.

Another one, the direct sales to Morgan Stanley and Manufacturers Life (reading):

"Management alerted us to the fact that the two deals sold to MicroTech in Q4 '09 have been credited in this quarter and resold directly to the two end users."

Two direct transactions after a sale to MicroTech, and what they did is credit MicroTech for the sale. But, again, the revenue was reported when they sold to MicroTech and wasn't double-counted when they made the sale again in the future quarter. Deloitte knew all about it, didn't have a problem with it, said that the accounting was proper.

So I hate to do this to you, but I think because of the level of detail that Mr. Reeves went into, I've got to go

through these reseller deals and these reciprocal deals, and so hold on to your hats at 20 to 4:00 and I'll do it for 20 minutes and then we'll come back tomorrow.

So let's start with the Capax reseller deals. Capax was at risk. There's about seven of them. They were at risk for all of them. There's the reseller agreement that you have seen (reading):

> "VAR shall not be relieved of its obligations to pay fees owed to Autonomy hereunder by the nonpayment of fees by an end user."

Next.

Egan sold these deals. Egan is the one who would come to his friend Baiocco, say, "Take this deal. I need it for my targets. I need it for the end of the quarter. It's about to close. It's 99 percent sure. Don't worry about it." And Baiocco would say yes.

Next.

And it wasn't like Capax and Baiocco were not important people or companies to Autonomy. It was a major provider of support and maintenance. You've heard about NearPoint. You heard about EAS. They would provide services that Mr. Baiocco would complain about not getting paid for for these areas where Autonomy didn't want to be in a service business but needed somebody to help the customers. Capax would do that. Capax also provided eDiscovery at least -- I mean, people that went

to Boston and got trained and so on.

Baiocco testified that they wanted these reseller deals to develop relationships with the customers so that Capax could get professional services work, which eventually it did, and he said they made millions.

And examples of Capax seeking services work from reseller customers, all of those reseller deals had some element -- remember TXU was the one where they acted as the payment agent. TXU didn't want to pay in one year. They want to pay over three years, and so they basically were the financing for them. But all of those people there were relationships with.

MicroTech. Let's go to -- excuse me.

And then, of course, there's Capax confirming all of its debts to Deloitte saying, "No side letters, we owe the money, and the debts are correctly accounted for."

And then here's a list in the work papers of Deloitte reviewing and testing all of those deals over $1 million where Capax was the reseller, and each one of those exhibits is in this pile of 1300 that you're going to get and shows Deloitte checking out to make sure that the Capax revenue was properly recorded.

Let's go to MicroTech.

The first one I want to talk about is the MicroTech/Discover Tech transaction where Autonomy sold to MicroTech the $10 million worth of software and then MicroTech

sold it on to Discover Tech for $10 million, and the testimony was the reason it went that way is because Discover Tech didn't have the collectibility requirements and MicroTech did.

The fact of the matter is that Discover Tech paid MicroTech, MicroTech paid Autonomy, Deloitte reviewed and approved the transaction, and there's the work paper to prove it.

Let's go to the next one.

He didn't -- let's skip over this one and go to Slide 32.

He mentioned the Department of the Interior but, again, the Department of the Interior is a -- Egan went to Dave Truitt and persuaded him to buy the Department of Interior deal, what they hoped would be the Department of Interior deal, and Dave Truitt agreed to do it.

We don't know what Egan told him, but we do know that Discover Tech bought it. Discover Tech could pay for it. It was a valid reseller deal. The fact that the Department of Interior didn't go forward with it or didn't do anything doesn't affect the revenue recognition. Same for all of these others with Discover Tech -- excuse me -- with MicroTech.

Let's go to the MicroTech/Hewlett Packard deal, Slide 33.

You've heard a lot about this one. This is the one where the Postal Service was very dissatisfied with what they were getting from Hewlett Packard and they were interested in getting Autonomy software in there. The question was: Is

Autonomy going to do it in kind of in partnership with Hewlett Packard or how is this going to work?

It was Egan's idea. We cite the e-mails that you can find this in. He talks to the head of HP software, and they're interested in trying to work something out.

Egan tells Mr. Hussain that selling to Hewlett Packard was a possibility so that Hewlett Packard would buy the deal and then use -- buy the software and then use it with the Postal Service.

Egan testified it was a real deal with real possibilities. He thought he had a breakthrough with the negotiations, and the exhibits show that Hewlett Packard was looking forward to hearing more about the deal notwithstanding the fact that they didn't end up doing it and decided -- and that the Postal Service didn't work with them.

So as a reseller deal, it was perfectly proper to recognize the revenue by -- from selling the software to Hewlett -- to MicroTech.

Let's go to the Discover Tech reseller deals.

All of these were at risk. Dave Truitt testified he was always on risk for these reseller deals. "We took the risk by issuing the order." In Q4 '10 he talks about (reading):

"**Q.** Discover Tech was at risk?

"**A.** Yes, sir.

"**Q.** What does it mean?

**"A.** It means if the deal doesn't happen, we still have to pay for the software that we've agreed to purchase."

Q2 '11, when they were still doing them (reading):

**"Q.** These were deals that you accepted the risk on and you owed the money on?

**"A.** Yes, sir. We figured out ways to meet our obligations."

Among the ways to meet their obligations is they figured out valuable things that they had that Autonomy could use and persuaded Autonomy to buy them, but that doesn't mean that -- I'm going to go over that in a moment -- but that certainly doesn't mean that the sale to the reseller was not properly recognized. It was on risk, collectible, and delivered.

You've heard a lot about this Abbott deal.

Could we look at 36, which is the Discover Tech/Abbott deal?

I mean, here, this one, as you know, I mean, Discover Tech was the customer. Truitt testified that they were on risk. The deal was collectible. Truitt had the money because he'd sold MicroLink. Autonomy tried to get Discover Tech involved with Abbott Labs, and Deloitte reviewed both the deals and approved Autonomy's revenue recognition.

They make this sound like this is some pie-in-the-sky, nutty thing. Let's remember Jane Snider's testimony.

Can we go to the next slide?

Jane Snider was the Autonomy salesperson on the account, and remember they needed a very large amount of eDiscovery software. Autonomy was already working with Abbott Labs to handle its eDiscovery work. It was pitching to get a new job by offering Abbott a discount.

And the idea was instead of just paying over time for this eDiscovery software, why don't you buy it upfront and then we will help -- we'll lower your payments as we go forward. And that's the slide that you saw before 34 million versus 29 million.

Again, Stouffer Egan didn't like these deals, but there's absolutely nothing illegal about them and in some ways they make a lot of sense. Rather than charge for services over time -- this year you pay me this much, next year you pay me that much and so on -- what you end up with is a customer that can at any time say, "I'm not dealing with you anymore. I'm going to go elsewhere."

If you take that same customer and get a big upfront payment and tell them it's not going to cost them as much for services over time and overall they will save money, then you've got a customer locked in. That's why they did it. That's why they did it on all these deals where they tried to move up the hosting.

Abbott Labs was on the verge of agreeing, and this is the one where all of a sudden the general counsel, I think he was,

says, "No way. We're not doing it because, you know, I don't like to recognize -- to pay money up front."

Well, from a business point of view, that is a standard negotiating tactic. A person comes back, he gives you a better deal. And, in fact, it's a different deal, but this same general counsel approved a little bit later exactly that, an upfront -- a different upfront deal for a short time -- a short time later. So there was no hard rule against this upfront deal. Again, this sale to Discover Tech was properly recognized and correct.

Quickly, the FileTek/VA. This is another -- you heard about this from Mr. Reeves. It's a reseller deal that was properly recognized. It didn't go through to the Veterans Affairs, but Mr. Loomis was on the hook, testified he was on the hook. It was properly recognized.

They gave them the right if the VA fails to execute an agreement for the software, FileTek shall have the right to license the software to an alternative user; and FileTek's failure to find another customer, will not relieve it of its obligations to pay. And they repeatedly confirmed to Deloitte that they were on the hook for this deal and it was properly attributed to them.

And then, finally, in this series the VMS hardware. This is the video people. They sold in Q4 '10, Autonomy sold 5 million of software and 6 million in hardware to VMS, and

they -- this is the one where to fulfill the order, they had $2.5 million worth of hardware and they were planning to repurpose 3.5 million from inventory. And Mr. Hussain said, "Is there any hardware we can repurpose?"

Mr. Goodfellow explained what that meant to him is, "Do we have anything that we've purchased we aren't currently using that we can use instead of buying new?"

Next.

And in their Fixed Asset Registry, they had $53 million worth of hardware inventory. And Mr. Goodfellow said (reading):

> "It was both things that were, as you saw, sitting in boxes as well as things that were being used for internal purposes or for delivery to customer."

They reassigned stock that was going to be given to another customer. There was no unplugging of computers from the walls or any of that business. It was a straight hardware sale.

This concept of the bonded warehouse is simply a guarantee that the product that is designated will be available for the customer. A bond is a promise. It's a guarantee.

VMS wanted its hardware over time. They wanted staggered delivery so they -- but what Autonomy did properly is designate hardware that they had in stock and say, "This is assigned to VMS." And the fact that they delivered it over time based on

the FOB issues, as soon as they designated it, the title switched so it became VMS hardware and it was delivered.

And VMS accepted title to the repurposed hardware. And, unfortunately for Autonomy, VMS went out of business before they paid for this hardware, but that's not anything that affects the revenue recognition when it occurred.

Deloitte reviewed and approved the transaction. If you have any doubt about it, go look at that work paper, 1417-K. It knew that -- and you'll see that they knew that the repurposed hardware was used and that it had previously been purchased.

They tested the value of the assets on the Fixed Asset Register. They tested Autonomy's delivery, and they signed off. So this charge -- or this attributing something to Mr. Hussain that he did something wrong is just plain wrong.

So in sum, Mr. Hussain followed the rules. He told the world what the rules were that Autonomy was following. Certainly Hewlett Packard when they came around knew that they were getting a company with 400 resellers. It's right there in the annual report. You can read it.

They knew that Autonomy was recognizing sales -- recognizing sales on sell-in not sell-through because it's right there in the annual report.

This is from the KPMG due diligence report (reading):

"Target recognizes revenue in accordance with IFRS."

Some policy differences relate and one of them is sell-in v. sell-through (reading):

"Target recognizes revenues for license sales upon sell-in to the VARS rather than a sell-through basis to end customers."

KPMG understood that. They reported that to Hewlett Packard.

Next slide.

And it was among their key findings, and you can look at that Exhibit 2004, which is the KPMG report on due diligence, which they did right in the middle of due diligence. There can't be any question that Hewlett Packard understood how Autonomy was dealing with resellers.

So that brings me to a year after the acquisition. That brings me to Mr. Yelland, and let me do this and then we'll stop for the day, I think.

A year after the acquisition closed, after HP bought them, it closed in October 2011, in November 2012, a year and a month later, Hewlett Packard stands up, Ms. Whitman the CEO, and screams fraud, that Mr. Apotheker is fired, Mr. Robison is fired.

Until then, Mr. Yelland, who was -- at that point had replaced Steve Chamberlain as the CFO of Autonomy within HP, until then Mr. Yelland and Deloitte had been working together on the books. There had been no mention of fraud. There had

been no mention of any problem with the hardware sales, which are just sitting there in the books for anybody to see.

Can we see slide -- yeah, this one.

And this is a summary of sort of where they were. They were about to do the ASL accounting and the audits were pretty far along. There was no discussion of a restatement.

Mr. Yelland told you that he wasn't forthcoming with Deloitte and that he had suspicions and doubts about the previous accounting. And I suggest to you that that testimony is simply absurd. Why wouldn't he bring his issues -- it's one thing -- maybe he's not going to bring his issues to the public, but why wouldn't he bring his issues to the attention of the auditors that he's working closely with and that he's about to audit the books with?

It was only after Hewlett Packard's CEO cried fraud that the Hewlett Packard machine went into action, and the first thing that happened is that -- this is the day of the announcement -- the decision was made to dismiss Deloitte, "Let's get rid of them because they're not going to help us say that HP has been defrauded."

And then this litigation-driven process involving lots of law firms. I mean, Morgan Lewis, Choate, Travers Smith is over in London, PWC is the accounting firm, this machine went into action, and Mr. Yelland was very much part of that machine.

At the prompting of these lawyers and accountants who were

working on the civil case in England against Dr. Lynch and Mr. Hussain, Mr. Yelland began this restatement, which disallowed all of the reseller deals we've been talking about. He just said, "They never should have been -- never should have been in the books." Anything with Capax, MicroTech, Discover Tech, MicroLink, he just took out of revenue and said, "See, this proves we've been defrauded."

His judgments were after the fact. They were in aid of litigation, and they were based on different standards and rules. He never really explained to you why these reseller deals weren't properly accounted for except that he said -- I think at some point he said, "Well, I don't think the risk passed."

As I've shown, that is counterfactual. It's just plain wrong. The people who took the deals, the resellers, said that the risk did pass.

They showed you summary charts that challenged revenue recognition on deals that we haven't even heard about in the evidence of this case.

I mean, these are -- the summary charts included these transactions, which you haven't heard a word about, but they're part of what goes into these totals that they put at the bottom of their demonstratives.

And, most importantly, the Hewlett Packard auditors refused to approve Mr. Yelland's work on this restatement

(reading):

"We have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly, we do not express an opinion on the financial statements."

That's the restatement. So he did all this work, litigation-driven work, came up with this thing that they're showing you like it's the gospel truth, and the auditors didn't sign off on it.

And I just want to leave you with this: How in the world can you be expected to know who is right in this auditing fight? How do you choose between Deloitte, who are the auditors trying to get it right at the time when there wasn't all this pressure, or Mr. Yelland who's working for the HP machine and is coming up with different conclusions based on hindsight much later when you haven't even heard about a lot of the sales that he is basing it on?

And with that, you've been listening to a lot of talking today, and I will thank you very much for your attention and look forward to talking to you again tomorrow with the Court's permission.

**THE COURT:** Yeah. Ladies and gentlemen, we're going to take our recess.

Just so you know the schedule, we will start at 9:00 o'clock sharp. We will hear -- Mr. Keker will give the

remainder of his closing. We will then listen to -- hear Mr. Frentzen on rebuttal, and then the case will be given to you for your deliberation.

So I would anticipate that will be somewhere late morning that the case will be given to you. At that point it really is in your hands how long you meet in any given day or time. It's up to you.

So it's a particularly crucial time now, please don't think about the case, maybe that's easy, but don't think about it, don't form or express any opinion.

Leave your notebooks in the jury room, and I'll see you all tomorrow.

(Proceedings were heard out of the presence of the jury:)

**THE COURT:** The jury has left.

Yes, Mr. Keker?

**MR. KEKER:** I wanted to double-check. You are going to send them out for deliberation when you're not going to be here tomorrow afternoon?

**THE COURT:** That's right. I'll be -- I'll be over at the Ninth Circuit. I'll have my --

**MR. KEKER:** Okay. So if something comes up, you can --

**THE COURT:** -- telephone.

If something comes up, I'm quite sure that both sides will agree on whatever should be --

**MR. FRENTZEN:** Sounds good.

**THE COURT:** -- what the appropriate response is, and I don't foresee any disagreements.

**MR. KEKER:** We don't the judge.

**THE COURT:** You know, this part of the proceedings isn't really that sensitive; right?

**MR. KEKER:** Okay. I'm just checking.

**THE COURT:** No, I'll be available.

**MR. FRENTZEN:** We'll just advise them to get back to work, Your Honor.

**THE COURT:** Yeah. You have everything.

**MR. KEKER:** We'll give them the Allen Charge.

**THE COURT:** The Allen Charge.

Okay. See you tomorrow.

(Proceedings adjourned at 4:02 p.m.)

---oOo---

**CERTIFICATE OF REPORTERS**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Monday, April 23, 2018

Jo Ann Bryce

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter

Pamela A. Batalo

Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter